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NOTIFICATION

No.B.12011/1/2016-PLG, the 20th April, 2016. The Governor of Mizoram is pleased to notify the policy on Public Private Partnership (PPP) in infrastructure development in the state of Mizoram as approved by the Council of Ministers in its meeting held on 7th April, 2016 and hereby published for information and necessary action.

POLICY ON PUBLIC PRIVATE PARTNERSHIP

1. INTRODUCTION

1.1. The Government of Mizoram is committed to improving the level and the quality of economic and social infrastructure and various services across the State. In pursuance of this goal, the Government of Mizoram envisages a substantive role for Public Private Partnership (PPP) as a means for harnessing private sector investment and operational efficiencies in the provision of public assets and services.

1.2. In order to facilitate and promote increasing role of Public Private Partnership in the creation of new infrastructure assets as well as for the management of existing ones, the Government of Mizoram proposes to lay down an explicit and a comprehensive policy. The policy detailed herein will put in position a broad framework for implementation of PPP in the State in physical and social infrastructure and provision of various services while being sensitive to public needs.

2. POLICY OBJECTIVES AND SCOPE

2.1 The key objective of this policy is to -

- 1) Leverage the resources of State Government and Central Government to invite private sector investment in infrastructure and provision of services at best possible terms for the people of the State.
- 2) Protection of the interest of users and securing value for public money.
- 3) Setting up of an efficient administrative mechanism to ensure selection of private sector developer through transparent bidding criteria.
- 4) To bring in uniformity in approach cutting across various sectors and Departments of the Government.
- 5) To prepare a shelf of projects to be offered for PPP under various Departments and take them forward for implementation.
- 6) Putting in place an effective and efficient institutional mechanism for obtaining various clearances for the projects speedily.

- 7) Provide a framework that clearly set forth the risks, rewards and obligations of different participants.
- 8) Create a robust dispute redressal mechanism / regulatory framework for PPP projects.
- 9) Provide the required Viability Gap Funding (VGF) where the essential projects are intrinsically unviable.
- 10) To create "Mizoram Infrastructure Development Fund (MIDF)" to facilitate implementation of the objectives of the policy.
- 11) Ownership and transfer of land to private/organization are to be avoided, but leasing of the land for specific tenures in conformity with land law of the State, extendable for specific periods and specific conditions may be allowed.

3. INFRASTRUCTURE SECTORS

3.1 The Government of Mizoram recognizes that constraint-free infrastructure provisioning fosters economic and industrial activities conducive to sustainable development and inclusive growth, as envisioned by it for the State. The Government of Mizoram also identifies that the private sector can play a significant role in infrastructure development, and that given the investor-friendly and transparent policies and frameworks, private investment can be facilitated. The Government of Mizoram shall stress upon Public Private Partnership mode because PPP approach is best suited for the infrastructure sector as it supplements scarce public resources, creates a more competitive environment and brings in the efficiencies of private sector management.

3.2 The indicative list of the infrastructure sectors covered by the policy is as follows :-

- 1) Roads, bridges and bypasses.
- 2) Inland water transport.
- 3) Agriculture Production, Horticulture, Agro Processing, floriculture.
- 4) Wasteland management.
- 5) Industrial parks, Theme Parks like IT/BT Parks, Knowledge Parks, and Townships.
- 6) Water Supply, Treatment and Distribution and collection of tariff.
- 7) Power Generation, Transmission and Distribution and collection of tariff.
- 8) Solid Waste Management.
- 9) Sewerage & Drainage.
- 10) Tourism.
- 11) Healthcare facilities.
- 12) Education.
- 13) Real Estate Development.
- 14) Urban Infrastructure including Entertainment and Recreational facilities.
- 15) Urban transportation systems / Improvement of Public Transport Facilities including construction of bus terminals, truck terminals, Maxi Cab Terminals, Multi-level car parking, City Bus stands.
- 16) Mining and mineral based industries and Infrastructure Development in Mining Areas.
- 17) Land Resources Management.
- 18) Disaster Management.
- 19) Any other sector / facility as may be included by the Government from time to time.

New projects and sectors can be included in the list with the approval of the PPP Apex Authority on PPP.

4. SERVICE DELIVERY THROUGH PUBLIC PRIVATE PARTNERSHIP

4.1. Government of Mizoram recognizes that "provider-charges" and the "user-pays" principles are crucial to the success of PPP in physical infrastructure. The Government would, where necessary

and appropriate, consider levying user charges (fees, tariffs, cess etc.) to cover costs of infrastructure provisioning and create a stable and dedicated financial source for construction/ redevelopment/ rehabilitation/ replacement of project assets and their ongoing operations and maintenance to involve and encourage the end users. The focus would be to provide efficient, sustainable and high quality services at affordable prices to the users.

4.2. The levy of user charges would be based on the following main considerations

- 1) Recovery of the investments
- 2) Recovery of Operations & Maintenance Cost
- 3) Savings to the users arising out of improved /created facilities.
- 4) Willingness to pay
- 5) Uniformity in various projects.

5. INSTITUTIONAL FRAMEWORK

5.1. The Government of Mizoram recognizes the requirement of effective and efficient institutional mechanism to ensure timely clearance of projects and therefore lays down the following structure to meet the policy goals.

5.2. **PPP Apex Authority**

There shall be constituted a PPP Apex Authority at the State Level with the following composition:

- | | | |
|--|---|------------------|
| 1) Chief Minister, Mizoram | – | Chairman |
| 2) Minister of Planning & Programme
Implementation Department | – | Vice Chairman |
| 3) Minister of Finance Department | – | Member |
| 4) Minister of Law & Judicial Department | – | Member |
| 5) Minister of Industries Department | – | Member |
| 6) Minister of Public Works Department | – | Member |
| 7) Minister of the line Department
(to which the projects belong) | – | Member |
| 8) Chief Secretary | – | Member Secretary |

5.3. **Power & Functions**

The PPP Apex Authority will grant in-principle approval for all projects proposed to be developed in PPP mode. Further, in all PPP projects having investment or where value of underlying assets exceeds Rs. 100 crore, the Apex Authority shall accord investment approval and selection of developer.

5.4. **Empowered Committee for PPP**

There shall be constituted a PPP Empowered Committee:

- | | | |
|--|---|------------------|
| 1) Chief Secretary | – | Chairman |
| 2) Secretary, Planning & Programme
Implementation Department | – | Member Secretary |
| 3) Finance Commissioner/Senior most officer of
the Finance Department by whatever
designation called | – | Member |
| 4) Secretary, Public Works Department | – | Member |
| 5) Secretary, Industries Department | – | Member |
| 6) Secretary, Law & Judicial Department | – | Member |
| 7) Secretary of the line Department
(to which the project belongs) | – | Member |

Empowered Committee on PPP will be free to co-opt members from other Department as and when considered necessary.

5.5. Responsibilities, Powers & Functions of Empowered Committee for PPP

The Empowered Committee on PPP shall be the nodal agency to achieve the policy goals and co-ordinate with various authorities of the State and Central Governments to facilitate private sector investment in developing infrastructure and provision of various services through PPP mode. The Powers and Functions of the Empowered Committee on PPP would include:

- 1) Sanction PPP Projects, approval of developer selected through competitive bidding and approval of concession agreements for PPP projects involving investment or where value of underlying assets is up to Rs. 100 crores.
- 2) Deliberate and recommend to Apex Authority the final bids for approval of the projects involving investment above Rs. 100 crores.
- 3) Sanction and authorize expenditure by Departments for PPP projects.
- 4) Adopt and develop Model Concession Agreements for various sectors.
- 5) Recommend projects for Viability Gap Funding to Government of India.
- 6) Prepare and seek the approval for the shelf of projects to be developed through PPP mode.
- 7) Deliberate and recommend to Apex Authority any special grants and concessions for ensuring financial viability of the projects.
- 8) Review and monitor PPP Projects during implementation, execution, operation and management.
- 9) Settle disputes between the parties.
- 10) Sanction fund out of Project Development Fund for undertaking project development activities.
- 11) Manage the "Mizoram Infrastructure Development Fund (MIDF)" proposed to be created to facilitate infrastructure development, and to recommend projects along with amount required to meet the objectives of this Policy.

5.6. PPP Cell

The Empowered Committee on PPP shall be assisted by the PPP Cell. The cell shall be established by a government notification in the Planning & Programme Implementation Department of the Government of Mizoram.

The PPP Cell is to be assisted by the financial, technical and legal consultants appointed by the government.

5.7. Functions of the PPP Cell

The functions of the PPP Cell and its Technical Secretariat would include:

- 1) To identify, conceptualize and create a shelf of projects in consultation with the line departments and seek approval of such projects for PPP from time to time from the Empowered Committee on PPP/Apex Authority.
- 2) To assist different government departments in preparing pre-feasibility reports by itself or through consultants.
- 3) Evaluate PPP projects from financial, legal angles.
- 4) Provide technical support in terms of finance, law to the Apex Authority and Empowered Committee on PPP.
- 5) To assist the respective departments in preparing Detailed Project Reports.
- 6) To help respective departments to conduct the bidding process for selection of developers.
- 7) To interact with the Department of Economic Affairs, Ministry of Finance, GOI for obtaining approval under the scheme of Viability Gap Funding (VGF).
- 8) To act as the nodal agency for capacity building for PPP in the state.
- 9) Prepare PPP rules for the states.

6. PROCEDURE FOR SELECTION AND APPROVAL OF PPP PROJECTS

6.1. Project Identification/ Conceptualization

The State Government Departments/Agencies in consultation with PPP Cell shall identify/ conceptualize infrastructure projects to be developed in the State through PPP mode and prepare a shelf of projects. Concerned Department will move the proposal with a concept note for inclusion in the shelf of projects. Approval for shelf of projects will be obtained from Empowered Committee on PPP.

6.2. Preparation of Preliminary Feasibility Report

State Government departments with assistance of the PPP Cell will prepare the preliminary feasibility report for the identified projects. The preliminary feasibility report should establish the need for the projects to be undertaken in PPP mode, contours of the project, rough project cost estimation, cost benefit analysis and indicative commercial viability of proposed project.

6.3. Approval of Projects for development under PPP Mode

Preliminary feasibility report will then be submitted to the PPP Cell along with other details in the formats that will be prepared for the purpose by the PPP Cell. On receipt of the preliminary feasibility report and other information from the concerned Department, the PPP Cell will forward the same to Finance Department, Planning & Programme Implementation Department and other line Departments for their comments to be submitted within 30 days. The PPP Cell will then place proposal along with the comments of these Departments before the Empowered Committee on PPP. The Empowered Committee on PPP shall review the proposal based on its merit, and recommend the proposal to the Apex Authority for grant of in-principle approval.

7. PREPARATION OF DPR, SETTING UP OF SPV AND SELECTION OF DEVELOPERS

7.1. Preparation of DPR

On obtaining in-principle approval of the Apex Authority the respective government department/ agency shall prepare a DPR. DPR should specifically indicate cost benefits of the project considering social and environmental factors. If there is need to engage a consultant for preparation of DPR, preparation of various contractual, concession and bid documents and assisting the Department in selection of investor, the same should be done through the transaction advisers short listed by the Ministry of Finance, Government of India. It should however be ensured that the transaction adviser selected for the project will not act as consultant/facilitator to any of the prospective bidders to avoid conflict of interest. The bid process shall be fully transparent and conforming to best practices in the Sector.

7.2. Setting up of Special Purpose Vehicle

There would be projects requiring substantial amount of land and other statutory clearances which is not only time consuming but requires constant follow up by competent professionals. Further these lands and clearances need to be transferred to the selected developer at a later date. It will be preferable to take up project development activities in respect of such projects by setting up a SPV, preferably in joint venture with the consultant selected for preparation of DPR and assisting the Department in selection of Developer. In such cases the expenditure incurred in obtaining land, other clearances and fees of consultants will be recovered from the selected Developer.

7.3. Selection of Developer

Selection of developer will be made through open and transparent Competitive Bidding process. Before floating bids, the approval of Empowered Committee on PPP will be obtained for the bidding criteria and bid process.

7.4. **Approval of Developer**

The outcome of the bidding process along with required particulars in the formats to be devised by PPP Cell for the purpose will be submitted to the PPP Cell. On receipt of the proposal from the concerned Department, the PPP Cell will forward the same to Finance Department, Planning & Programme Implementation Department and other line Departments for their comments to be submitted within 30 days. The proposal along with the comments of the Departments will be placed before Empowered Committee on PPP or Apex Authority through Empowered Committee on PPP depending upon the investment requirement for final approval before award of the project to the developer. On approval of the developer, the SPV formed for the project will be transferred to the developer. In cases where bidding criteria is based on the Viability Gap Funding (VGF) the procedure laid by Government of India, Ministry of Finance, in the VGF scheme will be observed in to.

8. **CONTRACTUAL ARRANGEMENT**

8.1. A transparent process would be followed in the award of all PPP contracts. The process of project implementation would be appropriately backed by contractual arrangements. The Government of Mizoram would develop contractual frameworks to allow for equitable allocation of risks between the contracting parties, taking into account the legitimate concerned of private investors. The attempt would be to allocate risks to the party best suited to bear the risks.

8.2. Approval of Contract Principles: In case a model contract for a Sector has not been adopted or in case there are deviations proposed vis-à-vis the approved model contract for a Sector, then, the Empowered Committee for PPP Constitution will formulate or approve the contract principles as the case may be.

8.3. The contractual arrangement for existing infrastructure projects would typically include:

- 1) Management of the assets by private operators through
 - (a) Operation and Maintenance (O&M) contracts for defined periods.
 - (b) Lease of assets.
 - (c) Rehabilitate, Operate, Maintain and Transfer (ROMT) contracts.
- 2) Partial divestiture of the Undertaking.

8.4. Contractual arrangement depending on nature of project, for new infrastructure projects would typically include, besides others, the options available under various common modes of PPP such as:-

- 1) Service Contracts;
- 2) Management Contracts;
- 3) Lease Contracts;
- 4) Concessions;
- 5) Build – Operate – Transfer (BOT) and similar arrangements; and
- 6) Joint Ventures.

9. **STATE SUPPORT AGREEMENT**

9.1. Concerned Department of the Government will sign a State Support Agreement with the investor to facilitate early financial closure and implementation. State support may, inter alia include:

- 1) Political Support Commitment on behalf of the Government that the project and its assets will not be nationalized during the Concession period.
- 2) Financial Support Commitment in addition to the viability gap funding from Government of India and other incentives available in the State Government may also contribute for the remaining portion of Viability Gap as emerged from the bid or other concessions if the State Government is of the opinion that providing such contribution is necessary as per greater public interest.

- 3) Other Support
 - (a) Facilitate acquiring of land necessary for the project.
 - (b) Assistance in rehabilitation & resettlement of affected families.
 - (c) Facilitate obtaining all State & Central Government clearances as may be required for the project.
 - (d) Facilitate the process of availing benefits under State Government Industrial Policy incentives wherever applicable
 - (e) Facilitate provision of supply of power and water at projects site.

10. SETTLEMENT OF DISPUTES

- 10.1. In the event of a dispute, both parties (Government Department and selected Investor) will make sincere attempt to resolve the dispute amicably. If both the parties fail to reach the settlement the matter will be referred to Empowered Committee in PPP who will resolve the dispute in terms of various agreements/concession failing which the matter will be dealt with under the provisions of Reconciliation & Arbitration Act.

11. MIZORAM INFRASTRUCTURE DEVELOPMENT FUND

- 11.1. The Government shall establish a fund to be called "Mizoram Infrastructure Development Fund (MIDF)". The fund shall be augmented by placing of funds by the Government from the consolidated Fund of the State, and may levy cess / tax separately to augment this fund. Planning & Programme Implementation Department will provide initial fund Rs. 20.00 crores to this fund. The fund will be utilized for building up the required infrastructure and the works to be undertaken would include-
 - 1) Taking up of technical and financial pre-feasibility and feasibility studies, preparation of reports and bid documents and any other activities that need to be undertaken prior to offering proposed infrastructure projects for private sector participation including facilitation to select projects to assess Viability Gap funding and other such schemes from Government of India.
 - 2) To provide direct financial support to the projects for enhancing project viability as considered by the Government.
 - 3) For capacity building and training.
 - 4) For any other purposes in pursuance of this act and building of infrastructure in the State.
- 11.2. **OPERATION OF FUND:** Detailed guidelines for operation of the fund shall be issued separately.

12. DURATION AND REVIEW OF POLICY

- 12.1. This policy would come into force with effect from the date of notification by the Government Order and would be effective till it is superseded by Government.
- 12.2. There may be a mid-term review of this Policy based on a critical assessment of feedback from stakeholders, and changes that would be deemed necessary and desirable, would be incorporated at that stage.
- 12.3. The government recognizes that expanding and institutionalizing the scope of PPP in provision of infrastructure may also necessitate appropriate changes in the existing legislative framework. It is however felt that the present framework offers sufficient scope for PPP in provision of infrastructure and various services to the citizens. The specific legislative constraints for PPP, if any would also be reviewed and addressed during implementation of this policy.

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