Draft PPP Rules, 2011
Discussion Draft

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CHAPTER I: INTRODUCTION

Rule 1: Short title and commencement

1. These rules shall be called Public Private Partnership (Preparation, Procurement and Management) Rules 2011.

2. Save as otherwise provided in these Rules, they shall come into force on the date of their publication in the Official Gazette.

Rule 2: Application

1. Subject to sub-Rules (2) and (3) below, these Rules shall apply to all projects proposed to be implemented on a PPP basis except where Tender Proceedings have not commenced by the relevant authority.

2. These Rules shall apply to:
   (a) to all Type I Projects
   (b) to all Type II PPP Projects

3. Nothing in these Rules shall apply to:
   (a) the Ministry of Defence, Government of India,
   (b) the Department of Atomic Energy, Government of India, and,
   (c) the Department of Space, Department of Science of Technology, Government of India.

Rule 3: Definitions

1. “Achievement and Exception Report” means the report submitted to the Empowered Review Cell by the Contracting Authority in accordance with Rule 98;,

2. “Applicant” means an entity which has submitted or is likely to submit a response to the EOI or RFQ, as the case may be;

3. “Application” means the submission made in response to the RFQ;

4. “Appointed Date” means the date on which the Concession Agreement comes into full force and effect in accordance with the terms outlined therein.

5. “Appropriate Government” means the Central Government, State Government or local government as the case may be.

6. “Approving Authority” means:
   (a) for Type I PPP Projects, the forum for approval of PPP Projects as notified by the Ministry of Finance, Government of India;
   (b) for Type II PPP Projects, the forum for approval notified by the respective State Governments/other government entities to take the investment decision in respect of the PPP Project;
7. “Best and Final Offer” or “BAFO” means an offer made in accordance with Appendix A. 5;

8. “Bid” means the submission made in response to the RFP;

9. “Bidder” means an entity which has submitted or intends to submit a Bid in response to the RFP;

10. “Bid Security” means a security furnished by the Bidder to the Contracting Authority 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;

11. “Competitive Dialogue” means competitive dialogue conducted in accordance with Rule 26:;

12. “Concessionaire” means the entity to which a PPP Project is awarded in accordance with these Rules.

13. “Concession Agreement” means the contract entered into between the Contracting Authority and Preferred Bidder for implementing a PPP Project;

14. “Conditions Precedent” mean the obligations which the Contracting Authority or the Concessionaire may be required to fulfil prior to financial close of the PPP Project, unless waived in writing by the relevant party in accordance with the terms of the Concession Agreement;

15. “Consortium” means a Respondent comprising of two or more private entities for the purpose of responding to a Tender Document. It is clarified that such consortium may include public sector entity/entities subject to the condition that such public sector entity/entities do not have a controlling stake in the consortium;

16. “Contingent Liability” means a liability accruing to a Contracting Authority through the Concession Agreement or PPP Project on the occurrence or non-occurrence of an uncertain future event.

17. “Contracting Authority” means the Appropriate Government, or an agency of the Appropriate Government, or a statutory authority or an entity under control of the Appropriate Government, or a Central Public Sector Undertaking, which is a signatory to the Concession Agreement.

18. “Contract Management” means activities of the Contracting Authority relating to supervision of a PPP or Concession Agreement;

19. “Contract Management Plan” means the contract management plan prepared in accordance with Rule 102:

20. “Contract Management Team” or “CMT” means the contract management team appointed under Rule 96:;

21. “Database” means the database maintained by the Contracting Authority in accordance with Rule 71:;
22. “DEA” means the Department of Economic Affairs, Ministry of Finance, Government of India;
23. “DOE” means the Department of Expenditure, Ministry of Finance, Government of India;
24. “Due Date” means the last date for the submission of Responses to the Tender Documents.
25. “Empowered Review Cell” means the empowered review cell constituted in accordance with Rule 97;
26. “Expression of Interest” or “EOI” means the submission made in response to the REOI;
27. “Final Offer” means the commercial offer made by a Bidder on the basis of the single criterion specified in the RFP;
28. “first round of bidding” means the first round of bidding conducted in accordance with Rule 91;
29. “Independent Engineer” means the Independent Engineer appointed under Rule 100;
30. “Lead Financial Institutions” mean the Lead Financial Institution identified by the Concessionaire under Rule 101;
31. “Letter of Award” or “LOA” means the letter of award issued by the Contracting Authority to the Preferred Bidder in accordance with Rule 91;
32. “Model Concession Agreement(s)” or “MCA” are documents approved by the Minister-in-Charge of the concerned Ministry/Department, after obtaining concurrence of all such Ministries/Departments, as are required to be consulted in terms of Rule 4 of the Government of India (Transaction of Business) Rules, 1961;
33. “Minimum Technical Requirements” or “MTR” shall mean the minimum technical requirements as described in Rule 73;
34. “Management Information System” or “MIS” means the information system and information requirements as may be specified by a Contracting Authority or Approving Authority, which is required to be implemented by a Concessionaire or any other entity as may be specified by the Contracting Authority or Approving Authority.
35. “PPPAC” means Public Private Partnership Appraisal Committee, set up by DEA by Notification F.No.2/10/2004-INF, dated November 29, 2005 pursuant to the decision of the Cabinet Committee on Economic Affairs (CCEA) in its meeting dated October 27, 2005;
36. “PPP Projects” mean projects proposed or being implemented on a PPP basis;
37. “PPP Rules” or “Rules” means the Public Private Partnership (Preparation, Procurement and Management) Rules 2011;
38. “Performance Security” means the bank guarantee furnished by the Concessionaire to the Contracting Authority for the performance of its obligations under the Concession Agreement;
39. “Public Private Partnership” or “PPP” means an arrangement between the Appropriate Government or a statutory entity or a government-owned entity or Central Public Sector Undertaking on one side and a private entity on the other, for the provision of public assets and/or public services, through investments being made and/or management being undertaken by the private entity, for a specified period of time, where there is well defined allocation of risk between the private entity and the public entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the public entity or its representative.

40. “Project Affordability” means the affordability of the PPP Project as specified in Rule 17;

41. “private entity” means:
   (a) in case of a company, a company that is outside the purview of Sections 617 and 619B of the Companies Act, 1956;
   (b) in case of other entities, those which are not under the control of the Government;

For the purpose of this definition, control means the ownership, directly or indirectly, of more than one half of the voting power of the entity;

42. “Project Officer” means the project officer appointed under Rule 10;

43. “pre-Feasibility Study” means the pre-feasibility study carried out in accordance with Rule 11;

44. “pre-Feasibility Report” means the pre-feasibility report prepared in accordance with Rule 11;

45. “Preferred Bidder” means 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;

46. “Project Value” means:
   (a) in case of PPP Projects where the private entity is expected to make capital investments, the value of the asset or facility to be constructed including the cost of land, if the cost of land is to be borne by the private entity; or
   (b) in case the PPP Projects where the private entity is not expected to make substantial capital investments, the current replacement value of the asset or facility, whose operation and maintenance is proposed to be the responsibility of private entity.

47. “Qualified Applicant” means an Applicant that has been qualified in the RFQ Stage;

48. “Registeree” means a potential participant in Tender Proceedings registered by the Contracting Authority in accordance with Rule 71;

49. “Request for Expression of Interest” or “REOI” means the Tender Document prepared and issued in accordance with Chapter VI;
50. “Request for Proposal” or “RFP” means the Tender Document prepared and issued in accordance with Chapter IX;

51. “Request for Qualification” or “RFQ” means the Tender Document prepared and issued in accordance with Chapter VII;

52. “Request for Technical Proposal” or “RTP” means the Tender Document prepared and issued in accordance with Chapter VIII;

53. “REOI Stage” means that part of the Tender Proceedings following the issue of the REOI by the Contracting Authority;

54. “Response” means any submission required to be made to the Contracting Authority as per the Tender Documents;

55. “Respondent” means any 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;

56. “RFP Stage” means that part of the Tender Proceedings following the issue of the RFP by the Contracting Authority;

57. “RFQ Stage” means that part of the Tender Proceedings following the issue of the RFP by the Contracting Authority;

58. “RTP Stage” means that part of the Tender Proceedings following the issue of the RTP by the Contracting Authority;

59. “second round of bidding” means the second round of bidding conducted in accordance with Rule 91;;

60. “Technical Proposal” means the submission made in response to the RTP;

61. “Tender Documents” mean, as applicable, the REOI, RFQ, RTP, RFP, draft Concession Agreement and any addenda or corrigenda issued by the Contracting Authority in respect thereof as part of the Tender Proceedings;

62. “Tender Evaluation Committee” means the team constituted by Contracting Authority as per Rule 31;;

63. “Tender Proceedings” mean the process adopted by the Contracting Authority for the award of the PPP Project;

64. “Type I PPP Projects” shall mean all projects proposed to be implemented on a PPP basis, which are sponsored by the Government of India or an agency of the Government of India or a statutory authority or other entities under control of Government of India or its agencies, Central Public Sector Undertaking and other entities under their administrative control

65. “Type II PPP Projects” means all projects proposed to be implemented on a PPP basis, not under the administrative jurisdiction of Government of India, for which:
(a) a capital grant of Rs. 50,000,000 (Rupees fifty crore) or more, or 20% (twenty percent) or more of the project value, whichever is lower, is sought or provided from Government of India; and

(b) assistance is sought as Viability Gap Funding, in conformity with the “Guidelines for Financial Support to Public Private Partnerships in Infrastructure” issued by Department of Economic Affairs, Ministry of Finance vide OM No. I/4/2005- PPP dated January 23, 2006, as amended from time to time.

66. “Value for Money Assessment” means the value for money assessment undertaken in accordance with Rule 19;

Rule 4: Responsibility of Contracting Authority

1. Every Contracting Authority shall be responsible for the implementation of these Rules while preparing, procuring, and managing PPP Projects.

2. The Contracting Authority shall apply for the approval of any deviations from the Rules to:
   (a) PPPAC, for Type I PPP Projects, and
   (b) Approving Authority, for Type II PPP Projects.

Rule 5: Probity and transparency

1. A Contracting Authority must carry out the responsibilities related to preparation, procurement and management of PPP Projects with complete probity and in a fair and transparent manner.

2. A Contracting Authority shall not include in the Tender Documents any condition or specification which favours or is likely to favour any individual Respondent or a group of Respondents.

3. All members of the Project Management Team and Tender Evaluation Committee, including the transaction advisor and/or consultants, as the case may be, must disclose any potential conflict of interest with the PPP Project.

4. The Contracting Authority shall evaluate such disclosure and formulate and implement an appropriate response to such conflict of interest, such as recusal of the official from any position where the conflict of interest could affect a decision.

5. The Contracting Authority shall record all such disclosures in the personnel file of the declarant and in the record of the Tender Proceedings.

Rule 6: Interpretation

1. If any difficulty arises as to the interpretation of any of the provisions of the Rules, the Contracting Authority shall refer such matter to the Department of Economic Affairs, Ministry of Finance for clarification.

2. The guidance provided by the Department of Economic Affairs, Ministry of Finance is final and binding on the Contracting Authority.
Rule 7:  Modifications and guidance materials

DEA and/or DOE may issue from time to time general or special instructions/orders:

(a) modifying the systems and procedures established by these Rules;

(b) for guidance in respect of the application and furtherance of these Rules.

Rule 8:  Rules not in derogation of other laws

The Rules are in addition to and not in derogation of any other central law or state law for the time being in force.
CHAPTER II: PPP PROJECT PRE-DEVELOPMENT

Rule 9: Identification of a PPP Project

The Contracting Authority shall identify potential projects that can be implemented on PPP basis. Such identification shall be based on social or economic priority, value for money, suitability for PPP or achieving efficiency in service delivery (or asset creation, as the case may be).

Rule 10: Appointment of Project Officer and Project Management Team

1. The Contracting Authority shall appoint a Project Officer who shall be responsible for the preparation and procurement of the PPP Project, up to signing of the Concession Agreement.

2. The Project Officer shall be responsible for the analyses related to the PPP Project and maintaining all documentation related to the PPP Project.

3. The Contracting Authority may appoint a Project Management Team to support the Project Officer, depending on the size and complexity of the PPP Project.

4. The Project Officer shall have the following responsibilities:
   
   (a) Defining the objective of the PPP Project;
   
   (b) Undertaking consultations with stakeholders for the identification of the PPP Project and documenting the same;
   
   (c) Establishing the suitability of a project for PPP and determining the value for money of such project in accordance with the Rules;
   
   (d) Assessing payment or revenue mechanism for the PPP Project and establishing its affordability for the Contracting Authority and potential users;
   
   (e) Developing the structure of the PPP Project;
   
   (f) Undertaking the processes for appointment of a transaction advisor, if required, and documenting the same;
   
   (g) Undertake the appointment of a legal advisor, if required, and documenting the same;
   
   (h) Planning, budgeting and implementing the pre-Feasibility Study, if any, Feasibility Study and procurement process and documenting the same;
   
   (i) Obtaining necessary approvals from relevant authorities for developing the PPP Project;
   
   (j) Efficiently managing all key activities related to the development and procurement of the PPP Project, on behalf of the Contracting Authority; and
   
   (k) Supporting the Contract Management Team in an efficient transition after the issue of Letter of Award to the Preferred Bidder.
Rule 11: Pre-Feasibility Study

1. The Project Officer may undertake a pre-Feasibility Study given the substantive investment of resources required in the project preparation stage. The Contracting Authority may appoint an external advisor to undertake the pre-Feasibility Study.

2. Funding for a pre-Feasibility Study may be met from the budget of the Contracting Authority or may be sourced from project development agencies or other institutions.

3. For Type I PPP Projects, the sanctioning of expenditure to be incurred towards a pre-Feasibility Study shall be as per the “Guidelines for Formulation, Appraisal and Approval of Government Plan Funded Projects/Schemes” notified by the Ministry of Finance, Department of Expenditure, vide OM No.: 1(3)/PF.II/2001 dated April 1, 2010, and as amended from time to time.

4. The pre-Feasibility Study of the PPP Project shall include but will not be limited to the following:
   (a) Needs and options analysis;
   (b) Legal feasibility;
   (c) Technical feasibility;
   (d) Scoping social/environment safeguards analysis;
   (e) Suggested project structure and PPP mode;
   (f) Preliminary financial viability including expectations of financial support required from the Appropriate Government;
   (g) Institutional capability analysis; and
   (h) Identification of next steps required.

5. The Project Officer shall prepare a pre-Feasibility Report on the basis of the pre-Feasibility Study.

6. The pre-Feasibility Report shall conform to the format provided in Appendix A. 3. The Contracting Authority shall document any deviations therefrom in a separate section of the pre-Feasibility Report and provide reasons for the deviations undertaken by the Contracting Authority.

Rule 12: Internal Clearance to Proceed with Project Development

1. The Project Officer shall submit the Pre-Feasibility Report and the supporting documents to the Contracting Authority. The Contracting Authority may approve the pre-feasibility Report if the same is in compliance with the Rules. In case these documents are not in compliance with these Rules, the Project Officer shall be required to revise them and resubmit them to the Contracting Authority for approval.

2. If the Contracting Authority grants clearance to proceed with the PPP Project, the Project Officer shall proceed with the preparation and procurement of the PPP Project. If the Contracting Authority does not grant clearance to proceed with the PPP Project,
the Project Officer shall redesign the PPP Project and continue with the process as defined in Rule 11: or alternatively, abandon the PPP Project.

**Rule 13: Registration of the PPP Project with DEA**

1. The Contracting Authority shall:
   
   (a) apply to the PPPAC Secretariat at DEA for registration of the PPP Project in the format prescribed in Appendix A. 2.

   (b) ensure the PPP Project is registered at the earliest and no later than date of issue of RFQ.

2. A written confirmation of the registration along with registration number of the PPP Project shall be provided to the Contracting Authority by the PPPAC Secretariat.

3. The details of the PPP Project will be maintained on the official database of PPP Projects, as notified by the Government of India. The progress of the PPP Project will be tracked and updated on this database throughout the project cycle.

4. Upon registration of the PPP Project, the Contracting Authority shall publish the name, nature and registration number of the PPP Project on its website as part of a continuing list of PPP Projects being developed by it. Such information shall be accessible to general public.

5. The pre-Feasibility Report shall be submitted by the Contracting Authority to DEA. As part of the pre-Feasibility Report, the Contracting Authority shall annex the documentation of the process followed for preparation of the pre-Feasibility Report, including the minutes of the meetings or discussions held as part of the process.

6. DEA shall, on quarterly basis, apprise PPPAC of all the PPP Projects registered with it.
CHAPTER III: PPP PROJECT PREPARATION

Rule 14: Budgeting and planning for the preparation and procurement process of the PPP Project

1. The Project Officer shall prepare a budget for the development and procurement processes of the PPP Project and obtain the approval of Contracting Authority for the same.

2. The Contracting Authority may find it necessary to seek funding for the expenses incurred in the development and procurement of the PPP Project, including the cost of advisors and/or consultants, from the India Infrastructure Project Development Fund, in which case the Contracting Authority shall follow the “Scheme and Guidelines for India Infrastructure Project Development Fund” notified by the Ministry of Finance, Department of Economic Affairs, vide OM No. 7/2/2007-PPP dated December 5, 2007, as amended from time to time.

3. The Project Officer shall prepare a work plan for the preparation phase of the PPP Project with specific activities and timelines. The work plan shall be reviewed by the Project Officer from time to time and updated to reflect progress.

Rule 15: Appointment of consultants and advisors

1. The Contracting Authority may engage advisors for undertaking the preparation and procurement of the PPP Project in an efficient, fair and transparent manner. The Contracting Authority may also engage financial, legal and technical consultants.

2. The Contracting Authority may alternatively choose to engage transaction advisors to be responsible and liable for advice related to all aspects of development and procurement of a PPP Project, including financial, legal and technical advice. The Contracting Authority can select a suitable arrangement based on size and complexity of the PPP Project.

3. Prior to undertaking the process of engagement of consultants and/or transaction advisors, the Project Officer shall prepare a procurement plan for consulting and/or advisory services which shall necessarily cover the following aspects:

   (a) Duration of the consulting and/or advisory services;
   (b) Terms of reference of the consulting and/or advisory services;
   (c) Milestones and schedule of the consulting and/or advisory services;
   (d) Skills, expertise and knowledge needed from each consultant and/or advisor - eligibility and qualification;
   (e) Estimated budget for the consulting and/or advisory services;
   (f) Procurement schedule for and/or advisory consulting services; and
   (g) Any other matter concerning the procurement of consulting and/or advisory services.
Rule 16: Feasibility Study

1. The Project Officer shall undertake the Feasibility Study. The Feasibility Study and due diligence for the PPP Project shall include but shall not be limited to the following:

   (a) Market Assessment to assess the need for and appropriate scope of the project. This would include a needs analysis, options analysis and demand forecast;

   (b) Technical feasibility and technical parameters based on the market analysis, including specifications of required facilities and detailed project costing;

   (c) Legal Analysis to assess the impact of the applicable laws and regulations;

   (d) Preliminary social and environmental feasibility, including the requirements for environmental and social impact assessments and for the associated mitigations;

   (e) Project structuring in terms of the recommended PPP mode or refinement of the PPP mode selected at the pre-feasibility stage;

   (f) Financial analysis incorporating a projected revenue structure, financial viability and affordability of the PPP Project for the Contracting Authority and the end users and assessing any need for financial support from the public sector through the Viability Gap Funding or otherwise;

   (g) Risk Assessment of the PPP Project, involving the identification of risk and allocation or risk to the party that is best able to manage each risk. The Feasibility Study may also include a quantification of the potential Contingent Liabilities that the Contracting Authority may have to incur over the project cycle;

   (h) PPP Suitability analysis involving an assessment of the suitability of the project to be undertaken as a PPP;

   (i) Value for money analysis, for evaluating the suitability for implementing a project on a PPP basis. The procedure for undertaking value for money analysis shall be in such manner as may be specified by the DOE.

   (j) Project implementation schedule, including an outline of the proposed PPP procurement and award process through to technical and financial close, an outline of the construction schedule and target operation date.

2. A format for the Feasibility Study is given in Appendix A. 4.

3. Upon completion of the Feasibility Study, the Contracting Authority shall prepare a business and technical plan, the structure of the PPP Project including the scope of services of the Concessionaire, a risk sharing framework and work plan for procurement of the PPP Project.

Rule 17: Project Affordability and Expenditure Control

1. The Contracting Authority shall examine the Feasibility Study and prepare, procure and implement a PPP Project, only upon the following being established:
(a) 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;

(b) It has considered all areas to optimise capital and operating costs and established a strong case for their reasonableness;

(c) The 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;

(d) User charges from the PPP Project are affordable to users and would be socially and economically acceptable to the Appropriate Government;

(e) The tariffs setting and revision framework is predictable and transparent. The tariff setting methodology may be:
   (i) established by a sector regulator; or
   (ii) periodically fixed through a duly recognized process; or
   (iii) based on a formula or methodology enshrined in the PPP or Concession Agreement; or
   (iv) based on such other methods and processes that shall ensure transparency and accountability in the tariff setting process.

(f) the direct financial commitments of the Contracting Authority and/or the Appropriate Government have been quantified and reasonably estimated for the entire contract duration and are within the budgetary limits of the Appropriate Government or the Contracting Authority, as the case may be. The lifecycle costs and revenues from the PPP Project establish the sustainability of the PPP Project throughout the concession period;

(g) The Contingent Liabilities, if any, have been assessed as per Rule 18: and are acceptable to the Contracting Authority; and

(h) The PPP Project does not pass on abnormally high risk on the Contracting Authority, either in terms of direct financial commitments or indirect or Contingent Liabilities.

**Rule 18: Contingent Liabilities management**

1. Contingent Liabilities can be classified as:

   (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 Contracting Authority to private entities involved with PPP Projects, involving a legal obligation on the part of the Contracting Authority. These are usually through contracts or letters of guarantees; and
Implicit Contingent Liabilities, which arise where the PPP Project relates to facilities and/or services that are strategically important and where the Contracting Authority has a moral or a political obligation to continue to provide a public service.

2. It should be noted that guarantees, as referred in clause (a) of sub-Rule (1) of Rule 18:, if provided by Contracting Authority, need not necessarily imply a guarantee of the Appropriate Government.

3. The Contracting Authority should therefore verify as to what guarantee, if any, is required and then seek appropriate prior approval from such authorities as may be required before proceeding with procurement.

4. The Contracting Authority will record in its annual statement the estimate of all guarantees and explicit Contingent Liabilities of the Contracting Authority.

5. The Contracting Authority shall submit to the Appropriate Government its annual statement in accordance with the applicable law.

6. The Contracting Authority shall examine various scenarios in the financial model underlying the Feasibility Study and assess the maximum financial impact that could arise for the Contracting Authority. The Contracting Authority shall assure itself that such possible financial impact is not financially debilitating for itself and that it shall be able to manage such outcomes should they materialise.

7. The Contracting Authority may create a sinking fund or make such other suitable provisions as it may deem fit to ensure settlement of the Contingent Liabilities, if the same are required to be paid by the Contracting Authority.

8. In addition, the Contracting Authority shall closely track the events that could lead up to invocation of such Contingent Liabilities, especially during the Contract Management.

**Rule 19: Value for Money Assessment**

1. The Contracting Authority shall examine the Feasibility Study and undertake Value for Money Assessment to satisfy that value for money is achieved through PPP.

2. 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 compare 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,

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

   (b) Comparing the risk adjusted net costs/ benefits of both the PPP Project and a publicly financed project on the Contracting Authority, and ascertaining the value for money.
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 size of transaction costs to the Contracting Authority of procuring the project as a PPP should be considered;

(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 Contracting Authority through potential third-party utilisation and through more efficient design to meet performance specifications;

(v) 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 Contracting Authority’s cost objectives.

Rule 20: Provision of land by the Contracting Authority

1. The Contracting Authority, while retaining all responsibility for making available unencumbered land for the PPP Project and obtaining clearances from relevant regulatory authorities, shall also ensure that the interest of land owners are fully protected under the extant laws.

2. Wherever land is provided for a specific use, alternative exploitation of the land by the Concessionaire shall be prohibited in the Concession Agreement.

3. The Contracting Authority shall decide whether the ownership of the land needs to be transferred to the Concessionaire or the land may be leased to the Concessionaire, depending on the requirements of the PPP Project.

4. In case of leasing of the land, the Contracting Authority shall decide on the term of the lease. The lease term shall be co-terminus with the term of the Concession Agreement, subject to extensions permitted under the Concession Agreement, if any.

Rule 21: Revenue Sharing or Revenue Support Mechanisms

1. The Contracting Authority shall decide whether to provide for revenue sharing or revenue support mechanisms within the Concession Agreement for the PPP Project.

2. This decision of the Contracting Authority shall be driven by the monopoly nature of the public service being provided by the Concessionaire under a PPP Project.

3. In case of a monopoly in the provision of the public service, the Contracting Authority may build in a revenue-sharing or revenue support mechanism to ensure that the
Concessionaire does not enjoy super-normal profits and at the same time does not suffer due to unforeseen revenue-side risks.

4. The specific revenue sharing or revenue support mechanism shall be developed by the Contracting Authority for a particular PPP Project and shall be structured in a manner such that it does not curtail private efficiency and at the same time does not compensate the Concessionaire for risks rightfully meant to borne by the Concessionaire under the Concession Agreement.

**Rule 22: Identifying the procurement method for the PPP Project**

1. A two-stage, open and competitive tendering shall be the preferred mode of procurement for a PPP Project, save in situations where exceptions have been provided under these Rules.

2. For PPP Projects less than Rs. 50,00,00,000 (Rupees Fifty Crore), a single stage, two or three cover, open and competitive tendering may be adopted.

3. Other methods of procurement may be applied only under exceptional circumstances:
   - (a) A two-stage, open and competitive tendering;
   - (b) A multi-stage, open and competitive tendering that
     - (i) has an intermediate Request for Technical Proposal Stage prior to the Request for Proposal stage; and/or
     - (ii) is preceded by a Request for Expression of Interest;
   - (c) Competitive Dialogue;
   - (d) Auction; and
   - (e) Best and Final Offer system in response to an unsolicited proposal.

**Rule 23: Two stage open competitive tendering**

A two-stage open competitive tendering shall include the following stages:

- (a) RFQ Stage that shall involve short-listing Qualified Applicants, in accordance with Chapter VII; and

- (b) RFP Stage that shall involve a selection of the Preferred Bidder who quotes the most advantageous Final Offer, in accordance with Chapter IX:

**Rule 24: Open competitive tendering with Request for Technical Proposal**

1. In case of exceptionally complex PPP Projects, where the Contracting Authority is desirous of assuring itself that the Qualified Applicants completely understand its requirements, the Contracting Authority may determine that the Qualified Applicants must submit Technical Proposals, the requirements whereof shall be specified in detail. Such Technical Proposals shall be invited at an intermediate stage preceding the RFP Stage. This shall be referred to as the Request for Technical Proposal and shall be conducted as per the provisions of Chapter VIII:
2. The RTP shall involve a technical evaluation in the form of a pass or fail test, and only submissions that pass the minimum technical criteria will be invited to submit a Bid under the RFP stage.

3. The Contracting authority may combine the RTP with RFP, as per the provisions of Rule 78; if Contracting Authority of the opinion that it is an optimal method.

**Rule 25: Open competitive tendering with Request for Expressions of Interest**

1. The Contracting Authority may adopt multi-stage open, competitive tendering involving a Request for Expressions of Interest, followed by a two or three-stage process as per Rule 23; or Rule 24;, as the case may be, in PPP Projects where the Contracting Authority is unsure of the likely interest from private entities in the PPP Project, or where it is keen to seek suggestions from private entities on how best to design the project scope or other parameters of the PPP Project. The procedures are specified in Chapter VI:.

2. In all cases relating to procurement of a PPP Project, the final evaluation criteria shall be in the form of a single objective parameter which shall be specified the RFP.

**Rule 26: Competitive Dialogue**

1. In complex contracts where the Contracting Authority is unable to objectively establish the exact project parameters needed to achieve project objectives, due to a number of possible technological, legal and /or financial options for developing a project, The Contracting Authority may opt for a competitive dialogue with Respondents to identify a solution and achieve clarity on the optimal project scope (“Competitive Dialogue”).

2. The Competitive Dialogue ends when the Contracting Authority can identify a solution or solutions, which meet its requirements.

3. Any exercise must be followed by the development of appropriate base financial and project models by the Contracting Authority and a competitive, fair and transparent tendering process avoiding discrimination or bias towards any single party. Qualified Applicants then submit tenders based on the solution resulting from the dialogue. Competitive Dialogue may be used only with prior written approval of competent authority.

4. The Contracting Authority shall carry out Competitive Dialogue in manner and according to the procedure laid out in Appendix A. 7.

**Rule 27: Auction**

1. Contracting Authority may consider auctions as an appropriate means for procurement in case of PPP Projects that seek to maximise the utilization of a natural resource and where revenue maximisation is a key objective for the Appropriate Government.

2. The Contracting Authority shall not undertake auctions in respect of public facilities or services, wherein the Appropriate Government has an obligation or an implicit moral obligation to the civic society for the continuous performance.

3. The Contracting Authority shall carry out auction in accordance with the procedure specified in Appendix A. 6.
4. The Contracting Authority may utilize the system of electronic Auction only in accordance with the procedure specified in Appendix A. 6.

**Rule 28: Treatment of unsolicited bids**

1. The Contracting Authority may accept unsolicited proposals only in exceptional circumstances and in such sectors as prescribed by the DEA/DOE from time to time.

2. The project that is the subject of such unsolicited proposal must satisfy all of the following financial conditions:
   
   (a) the project should not require any form of guarantees from any national or state or local government or its agencies,
   
   (b) the project should not require transfer of ownership of land of the Central or State or local government or its agencies, and
   
   (c) the project should not have been identified earlier by the Contracting Authority, as duly documented in its published plans or in any of its official document.

3. The project that is the subject of such unsolicited proposal must satisfy any one of the following technology conditions:
   
   (a) The project involves use of proprietary technology, or The project involves use of new or innovative technology or design, or
   
   (b) The project provides a new and cost-effective method of service delivery.

4. The project that is the subject of such unsolicited proposal must satisfy any one of the following sector conditions:
   
   (a) The project involves delivery of facilities or services to predominantly (at least 50% (fifty percent) of coverage) rural or peri-urban areas;
   
   (b) The project involves delivery of facilities or services to predominantly (at least 50% (fifty percent) of coverage) to population below poverty line;
   
   (c) The project involves delivery of facilities or services in public healthcare or education or public shelter or vocational training or rural information technology.

5. The Contracting Authority shall follow the procedure specified in Appendix A. 5 while accepting an unsolicited proposal.

**Rule 29: Preparation of draft Tender Documents for the PPP Project**

1. The Project Officer shall prepare the draft Tender Documents for the PPP Project including the Request for Qualification, Request for Proposal, draft Concession Agreement and any other document required based on the procurement process selected.

2. The Project Officer shall adopt the model tender documents duly approved by the competent authority. The Ministry of Finance has notified Model Request for Qualification for PPP Projects for Infrastructure (File No. 24(1)/ PF-II/2006) dated May
18, 2009 and Model Request for Proposal for PPP Projects for Infrastructure (File No. 24(1)/ PF-II/07) dated November 30, 2007, as amended from time to time, for preparation of the Request for Qualification and Request for Proposal. The Contracting Authority shall deviate from the model documents referred in this sub-Rule only for the purpose of making the model documents suitable for a particular sector or PPP Project. All such deviations from the model tender documents shall be with the approval of PPPAC for Type I PPP Projects and relevant Approving Authority for Type II PPP Projects. For the purpose of taking securing an approval, the Project Officer shall submit a written application to PPPAC or the relevant Approving Authority, as the case may be, detailing the deviations from the model tender documents referred to in this sub-Rule and the reasons thereof along with the draft Tender Documents.

3. For sectors that are not covered by the model documents referred to in sub-Rule (2) of Rule 29:, the Project Officer shall prepare the draft Request for Qualification and Request for Proposal based on the principles followed in the model documents. Such draft documents shall be approved by PPPAC for Type I PPP Projects and relevant Approving Authority for Type II PPP Projects.

4. The Tender Documents shall contain elements which:
   (a) reduce the cost of submitting Responses;
   (b) provide appropriate guidelines for evaluation of Responses, and
   (c) promote the purpose of the Contracting Authority to maximize value for money.

**Rule 30: In-principle clearance to proceed with procurement of the PPP Project**

1. For Type I PPP Projects, the Contracting Authority shall seek in-principle clearance to proceed with procurement of the PPP Project in accordance with, and provide documents as specified in, the “Guidelines for Formulation, Appraisal and Approval of Central Sector Public Private Partnership Projects”, notified by the Department of Economic Affairs, Ministry of Finance, Government of India, vide OM No. 1/5/2005 – PPP dated January 12, 2006 and as amended from time to time.

2. For Type II PPP Projects, the Contracting Authority shall apply for an in-principle clearance to proceed with procurement of the PPP Project from the relevant Approving Authority.

3. If in-principle clearance is not granted, the Contracting Authority may redesign the PPP Project and restart the process as defined in Rule 16:, or, alternatively, abandon the PPP Project.
CHAPTER IV: PROJECT PROCUREMENT PLANNING

Rule 31: Formation of Tender Evaluation Committee

1. The Contracting Authority shall form a Tender Evaluation Committee for evaluation of Responses received as part of the Tender Proceedings.

2. The membership of the Tender Evaluation Committee shall consist of:
   (a) The head of the Contracting Authority or nominated representative, who shall serve as the chairman of the committee;
   (b) Representative of Ministry of Finance, or equivalent department in case of Type II PPP Projects;
   (c) Secretary of the line ministry or nominated representative;
   (d) Head of PPP Cell of the line ministry or nominated representative;
   (e) Other members as considered necessary; and
   (f) Invitees, as deemed necessary by the chairman.

3. Each member of Tender Evaluation Committee shall declare that they have no conflict of interest in the PPP Project. In case any member of the Tender Evaluation Committee has any conflict, then such member shall forthwith, without any delay disclose details of such conflict in the format set out in Appendix A. 9.

Rule 32: Appointment of Independent Monitor

1. The Contracting Authority shall appoint an Independent Monitor to oversee and ensure the transparency in the Tender Proceedings and public budget allocation processes.

2. The Contracting Authority shall
   (a) provide complete information, documentation and other information related to the PPP Project to the Independent Monitor in a timely and transparent manner.
   (b) extend co-operation and necessary support as may be required by the Independent Monitor for discharging its role under the Rules.

3. The Independent Monitor shall be a representative of Ministry of Finance or from the Ministry of Law, or a representative of equivalent department in case of Type II PPP Projects, or from an independent audit firm, or an independent expert or body of repute.

4. The Independent Monitor shall:
   (a) Monitor and record the conduct of the participants and the proceedings during the procurement and contract finalisation stages; and
   (b) Review all documentation and attend all internal and external meetings.
   (c) not approve any decision or document. It has the responsibility to certify that the preparation and procurement of a PPP Project is in conformance with the Rules.
(d) report directly to the Approving Authority or any entity to which such power has been expressly delegated by the Approving Authority.

(e) submit an independent report to the Approving Authority or any entity to which such power has been expressly delegated by the Approving Authority to verify that activities have been conducted as per the provisions of the Rules and document deviations or exceptions if any.

**Rule 33: Developing the procurement plan**

1. The Project Officer shall develop the procurement plan to undertake the procurement process.

2. The procurement plan shall
   
   (a) define each stage of the procurement process in accordance with the procurement method selected.
   
   (b) lay down the schedule of the procurement process. The Contracting Authority shall comply with the schedule;

3. The Contracting Authority shall bring any deviations therefrom to the notice of the PPPAC for Type I PPP Projects and relevant Approving Authority for Type II PPP Projects.

4. The Contracting Authority shall make public this schedule on its website.

5. Procurement plan shall be submitted to DEA for Type I PPP Projects and the relevant Approving Authority for Type II PPP Projects along with other requisite document at the time of seeking in-principle approval.
CHAPTER V: GENERAL PROVISIONS REGARDING PROCUREMENT PROCESS

Rule 34: Form of communication

1. Subject to provisions of the Rules, communication between Respondents and the Contracting Authority shall be in a form that provides a record of the content of the communication.

2. Any document, notification, decision or any other information generated in the course of the procurement process and communicated as required by the Rules or in the course of a meeting or forming part of the record of procurement proceedings shall be in a form that serves as a record of the content of the information and that is accessible so as to be usable for subsequent reference.

Rule 35: Language of communication

The Tender Documents shall be formulated in English. The Contracting Authority may, at its discretion, formulate the Tender Documents in any other language, including any official language of India and foreign languages, to ensure that a larger number of Respondents can comprehend and evaluate the Tender Documents.

Rule 36: Publication of advertisement/notification of Tender Documents

1. The Contracting Authority shall publish the advertisement/notification of the Tender Documents in at least one English daily and one Hindi daily of national circulation. Based on the nature of the procurement and the potential Respondents, the Contracting Authority may, at its discretion, issue the advertisement/notification of the Tender Documents in newspapers of other languages, including foreign languages.

2. The Contracting Authority shall publish the advertisement/notification of the Tender Documents on its own website and on the centralized PPP e-procurement website of Government of India.

3. For Type II PPP Projects, if there is a website pertaining to the state sector, then the advertisement/notification of the Tender Documents shall be published on such website as well.

4. The Contracting Authority may, depending on the nature of procurement, issue the advertisement/notification of the Tender Documents in trade journals or business publications or other periodicals.

5. The Contracting Authority shall ensure that the advertisements/notification of the Tender Documents mentions the website of the Contracting Authority from where the Tender Documents can be downloaded.

6. The Contracting Authority 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 centralized PPP e-procurement website of Government of India.
7. Once advertisement/notification of the Tender Documents is made, the Contracting Authority 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.

**Rule 37: Hosting of procurement documents on the website**

The Contracting Authority shall ensure that the Tender Documents are hosted on its website, the centralized PPP e-procurement website of the Government of India and centralized procurement websites of the Government of India such as www.tenders.gov.in, in their entirety, including all their components as mentioned in these Rules and addenda/corrigenda, if any, in the same form as is available in hardcopy to all Respondents.

**Rule 38: Use of e-Tender system**

1. The Contracting Authority may utilize the system of e-tender, provided the Contracting Authority puts in place effective IT infrastructure to ensure security, integrity and effectiveness of the procurement proceedings.

2. The Contracting Authority shall follow the procedures notified by DEA/DOE in this regard.

**Rule 39: Disqualification of Respondents**

1. The Contracting Authority may disqualify a Respondent if it finds at any time that a Response was materially inaccurate or materially incomplete.

2. Other than in a case to which sub-Rule (1) of Rule 39: applies, the Contracting Authority may not disqualify a Respondent on the ground that the Response was inaccurate or incomplete in a non-material respect. The Respondent may, however, be disqualified if it fails to promptly remedy such deficiencies upon request by the Contracting Authority.

3. The Contracting Authority shall disqualify a Respondent from the Tender Proceedings if it is of the view that:

   (a) the Respondent has offered, given or agreed to give, directly or indirectly, to any current or former officer or employee of the Contracting Authority or other governmental authority a gratuity in any form, an offer of employment or any other thing of service or value, so as to influence an act or decision of, or procedure followed by, the Contracting Authority in connection with the procurement proceedings; or

   (b) a Conflict of Interest exists as per the provisions of Rule 41:; or

   (c) one or more of the qualification criteria have not been met by the Respondent; or

   (d) the Respondent has made a material misrepresentation; or

   (e) the Respondent has been blacklisted by the Contracting Authority as per Rule 40:.
4. In the event that the Respondent is a consortium, the disqualification shall be effective against every member of the consortium.

5. Any decision of the Contracting Authority to disqualify a Respondent and the reasons thereof shall be included in the record of the Tender Proceedings and shall promptly be communicated to the Respondent concerned.

6. If the Contracting Authority becomes aware of disqualification on the grounds specified in Rule 39; after the Preferred Bidder has issued the LOA or after the Concession Agreement has been signed, the Contracting Authority shall terminate the Concession Agreement or LOA, as the case may be, by a communication in writing.

7. If the Preferred Bidder is disqualified after the Bids have been opened and evaluated, the Contracting Authority may:
   (a) invite the remaining Bidders to match the bid of the Preferred Bidder or resubmit their Bids in accordance with the RFP; or
   (b) take any such measure as may be deemed fit in the sole discretion of the Contracting Authority, including annulment of the Tender Proceedings.

**Rule 40: Blacklisting of Respondents**

1. The Contracting Authority shall create, maintain and publish a blacklist of Respondents in the following circumstances:
   (a) the Respondent has been disqualified by the Contracting Authority under Rule 39; or
   (b) the Respondent is guilty of fraud in respect of the Tender Proceedings; or
   (c) any action of another government entity that amounts to blacklisting of the Respondent for any procurement process and such blacklisting subsists at the time of commencement of the Tender Proceedings; or
   (d) the Respondent has submitted a false certificate of no Conflict of Interest, in the event such certificate is required by the Contracting Authority.

2. The Contracting Authority shall:
   (a) specify in the blacklist the reasons for and the period of the blacklisting and other appropriate information;
   (b) update the blacklist at least on a monthly basis.

3. Respondents who have been blacklisted by the Contracting Authority 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 Contracting Authority 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.
Rule 41: Conflict of Interest

It shall be the responsibility of Contracting Authority to ensure any Respondent does not have a conflict of interest that affects the Tender Proceedings (“Conflict of Interest”). An Applicant shall be deemed to have a Conflict of Interest, if:

(a) any other Respondent, its members or any associate or constituent thereof have common controlling shareholders or other ownership interest, as defined in Model Request for Proposal for PPP Projects dated November 30, 2007 issued by PF-II Section, Department of Expenditure, Ministry of Finance, as amended from time to time. Provided, that this sub-Rule shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 4A of the Companies Act, 1956;

(b) a constituent of such Respondent is also a constituent of another Respondent; or

(c) such Respondent, or any associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Respondent, or any associate thereof has provided any such subsidy, grant, concessional loan or subordinated debt to any other Respondent, its member or any associate thereof; or

(d) such Respondent has the same legal representative for purposes of the Tender Proceedings as any other Respondent; or

(e) such Respondent, its member or any associate thereof, has a relationship with another Respondent, 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 Response of either or each other; or

(f) such Respondent, its member or any associate thereof, has participated as a consultant to the Contracting Authority in the preparation of any documents, design or technical specifications of the PPP Project; or

(g) if any legal, financial or technical adviser of the Contracting Authority in relation to the PPP Project is engaged by the Respondent, its member or any associate thereof, as the case may be, in any manner for matters related to or incidental to the PPP Project. Provided that this sub-Rule shall not apply where such adviser was engaged by the Respondent, its member or associate in the past but such engagement expired or was terminated 6 (six) months prior to the date of issue of concerned Tender Document or where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the PPP Project.

Rule 42: Security

1. The Bidders may be required to provide a Bid Security, not more 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.

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

3. The Bid Security shall be forfeited if the Bidder:
(a) withdraws its Bid after the Due Date for submission of Bids, or
(b) following the opening of Bids, withdraws its Bid before expiration of the period of
effectiveness of the Bid, or
(c) fails to furnish any required Performance Security at the time of award of the
Concession Agreement; or
(d) stands disqualified in terms of Rule 39:

4. The Bid Security shall remain valid for a period not less than 28 (twenty eight) days
beyond the period for effectiveness of the Bid in order to provide the Contracting
Authority sufficient time to act if the security is to be called.

5. 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.

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

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

**Rule 43: Change in ownership**

1. In the event that the Preferred Bidder is a consortium, the members of such consortium
shall collectively hold

   (a) not less that 51% (fifty one percent) of the issued and paid up share capital of the
   Concessionaire until the Commercial Operation Date of the PPP Project is
   achieved.

   (b) not less 26% (twenty six percent) of the issued and paid up share capital of the
   Concessionaire for the term of the Concession.

2. In the event of a change in control of a member of a consortium or an Associate whose
   technical capacity and/or financial capacity was taken into consideration for the
   purposes of pre-qualification in the RFQ Stage, prior to the signing of the Concession
   Agreement, the Bidder shall inform the Authority forthwith along with all relevant
   particulars about the same and the Authority may, in its sole discretion, disqualify the
   Bidder or terminate the LOA, as the case may be.

3. In the event change in control as described in sub-Rule (2) occurs after signing of the
   Concession Agreement but prior to Financial Close of the PPP Project, it would,
   notwithstanding anything to the contrary contained in the Concession Agreement, be
deemed to be a breach thereof, and the Concession Agreement shall be liable to be
terminated without the Authority being liable in any manner whatsoever to the
Concessionaire. In such an event, notwithstanding anything to the contrary contained in
the Concession Agreement, the Authority shall forfeit and appropriate the Bid Security
or Performance Security, as the case may be, as mutually agreed genuine pre-estimated
compensation and damages payable to the Contracting Authority for, inter alia, time,
cost and effort of the Contracting Authority, without prejudice to any other right or remedy that may be available to the Contracting Authority hereunder or otherwise.

**Rule 44: Acceptance or rejection of Responses**

1. The Contracting Authority 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 Contracting Authority rejects or annuls all the Responses, it may, in its discretion, invite all Respondents to submit fresh Responses.

2. The Contracting Authority may reject a Response if:
   
   (a) at any time, a material misrepresentation is made or uncovered, or

   (b) the Respondent does not provide, within the time specified by the Contracting Authority, the supplemental information sought by the Contracting Authority for evaluation of the Response.

3. If the Bid of the Preferred Bidder is rejected after the Bids have been opened and evaluated, the Contracting Authority may:
   
   (a) invite the remaining Bidders to match the bid of the Preferred Bidder or resubmit their Bids in accordance with the RFP; or

   (b) take any such measure as may be deemed fit in the sole discretion of the Contracting Authority, including annulment of the Tender Proceedings.

**Rule 45: Schedule of Tender Proceedings**

1. The Contracting Authority 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.

2. Notwithstanding anything in Rule 44, any deviations from the minimum periods prescribed for Tender Proceedings in these Rules shall be documented and submitted to PPPAC for Type I PPP Projects and Approving Authority for Type II PPP Projects, as part of the application for approval under Rule 83.

**Rule 46: Clarifications on Tender Documents**

1. The Contracting Authority 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 Contracting Authority only in writing.

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

3. The Contracting Authority 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.
4. Contracting Authority 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.

**Rule 47: Pre-submission meeting**

1. Post issue of the RFQ, RTP or RFP, as the case may be, the Contracting Authority may, at its discretion, organize a pre-submission meeting for the purpose of clarifying the queries and understanding the concerns of Respondents.

2. The Contracting Authority shall consider comments and suggestions provided by the Respondents in the pre-submission meeting and, where appropriate, revise the Tender Documents.

3. The pre-submission meeting shall not be a substitute for any other manner of communication of queries by Respondents.

4. The Project Officer shall maintain the minutes and list of attendees of the pre-submission meeting and circulate the same to all attendees.

**Rule 48: Modification of Tender Documents and Responses**

1. At any time prior to the Due Date, the Contracting Authority 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.

2. Any such addendum or corrigendum shall be communicated in accordance with Rule 36: and will be binding on all Applicants or Bidders, as the case may be.

3. 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 Contracting Authority prior to the Due Date. In case of a Bid, such withdrawal or modification shall not result in forfeiture of the Bid Security.

**Rule 49: Manner, place and Due Date for submission of Responses**

1. The Contracting Authority:
   
   (a) 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;

   (b) 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;

   (c) may, prior to the Due Date, extend the Due Date in its discretion. In such instance, the Contracting Authority shall publish notice of such extension, in accordance with the provisions of Chapter V:

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

3. A response received by the Contracting Authority after the Due Date shall not be opened and shall be returned unopened to the Respondent.

**Rule 50: Test of responsiveness**

1. Prior to evaluation of Responses, the Contracting Authority shall determine whether each Response is responsive to the requirements of the applicable Tender Document.

2. A Response shall be considered responsive only if all items of information required from the Responses is submitted in the specified format and it is not materially inaccurate or incomplete and it is not conditional.

3. The Contracting Authority shall reject all Responses which are non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Contracting Authority in respect of such Response.

**Rule 51: Clarifications on qualification information**

1. The Contracting Authority may, at any stage of the Tender Proceedings, ask any Respondent for clarifications on its Response, in order to assist in the evaluation of such Response.

2. Provided that the Contracting Authority shall:
   
   (a) not seek, offer or permit any substantive change to the submission (including changes aimed at qualifying/passing a Respondent, as the case may be);

   (b) not engage in negotiations with a Respondent with respect to the submission, pursuant to a clarification that is sought under this Rule; and

   (c) maintain in the record of Tender Proceedings, all communications generated under this Rule.

**Rule 52: Confidentiality**

The Contracting Authority 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 Contracting Authority shall not disclose any such information unless:

(a) directed to do so by any statutory entity that has the power under law to require such disclosure, or

(b) such disclosure is to enforce or assert any right or privilege of the statutory entity and/or the Contracting Authority, or

(c) is required to do so by law or in connection with any legal process.
Rule 53: Record of Tender Proceedings

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

(a) subject matter of the procurement process;

(b) basic information (including names, addresses, authorized representatives) of Respondents;

(c) statement of the reasons and circumstances relied upon by the Contracting Authority for decisions as part of the procurement process;

(d) a summary of requests for clarification and the responses thereof;

(e) statement of reasons for rejection of Applications or Bids;

(f) principal terms of the Concession Agreement; and

(g) the deviations from the model tender documents.

Rule 54: Code of Conduct

A code of conduct for officers or employees of Contracting Authority shall be documented and implemented. It shall address, inter alia, the prevention of conflicts of interest in procurement and, where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declarations of interest in particular procurements, screening procedures and training requirements. The code of conduct so documented shall be promptly made accessible to the public and systematically maintained.
CHAPTER VI: EXPRESSION OF INTEREST

Rule 55: Applicability of REOI

1. The Contracting Authority may adopt a multi-stage, open, competitive tendering involving a Request for Expressions of Interest, followed by a two or three-stage process as per Rule 23: or Rule 24:, as the case may be, in PPP Projects where the Contracting Authority is unsure of the likely interest from private entities in the PPP Project, or where it is keen to seek suggestions from private entities on how best to design the project scope or other parameters of the PPP Project.

2. The Expression of Interest shall not be used to either shortlist or disqualify Bidders and any entity which have not submitted EOI shall also be allowed to participate in the RFQ Stage as per terms and conditions that may be specified thereof.

Rule 56: Preparation of the REOI

1. The Project Officer shall prepare the REOI.

2. The REOI shall contain:
   (a) the description of the PPP Project
   (b) the request for expressions of interest.
   (c) a closing date for seeking clarifications.

3. The REOI shall specify sufficient time to the interested parties to consider the REOI, form a team if they decide to express interest as a consortium, respond with any questions or requests for clarification, and to prepare and submit their EOI.

Rule 57: Issue of the REOI

1. The advertisement/notification of the REOI shall be published in accordance with the provisions of Chapter V:

2. The Contracting Authority shall seek registration of Applicants prior to the issue of the REOI. In the case of electronic issuance of the REOI, an online form shall be provided where as in the case of issue of a hardcopy, an application letter seeking specific details will be sought. Applicants shall be asked to provide details including but not limited to the following:
   (a) Name of the organisation;
   (b) Contact person with designation;
   (c) Address;
   (d) Telephone and fax numbers; and
   (e) E-mail address.

3. The REOI shall be made available only against registration of Applicants with the Contracting Authority.
Rule 58:  Meet and Interaction

The Contracting Authority may convene meetings, to interact with Applicants, so as to facilitate greater interest and understanding of the proposed PPP Project among potential private partners.

Rule 59:  Schedule of REOI

The following minimum periods shall be followed by the Contracting Authority while determining the schedule of the REOI process:

(a) The Due Date shall be no later than 4 (four) weeks from the date of advertisement/notification of the REOI;

(b) The meeting under Rule 58; if provided for, shall be held not less than 21 (twenty one) days before the Due Date;

(c) The clarifications on queries of Applicants shall be issued not less than 14 (fourteen) days before the Due Date; and

(d) Corrigenda or notifications of amendments in the EOI shall be issued not less than 14 (fourteen) days before the Due Date.
CHAPTER VII: REQUEST FOR QUALIFICATION

Rule 60: Request for Qualification

Request for Qualification Stage shall be undertaken to:

(a) make public the information on the PPP Project and the services/infrastructure that the Contracting Authority seeks to obtain;

(b) communicate the proposed timeframes and the qualification criteria;

(c) ascertain the level of interest in the PPP Project and provide an avenue through which Respondents can comment on the proposed PPP Project; and

(d) allow the Contracting Authority to qualify Applicants for the RFP Stage who are most capable of meeting project objectives over the project term.

Rule 61: Preparation of the RFQ

1. The Project Officer shall prepare the RFQ;

2. The Project Officer shall ensure that:

   (a) the RFQ contains sufficient information to allow potential Respondents to form a view on whether they have sufficient capabilities and identify potential partners for the PPP Project; and

   (b) the information requested from the Applicants is such that the Contracting Authority can qualify the Applicants.

Rule 62: Contents of RFQ

1. The Project Officer shall adopt the Model Request for Qualification for PPP Projects in infrastructure dated May 18, 2009 issued by PF-II Section, Department of Expenditure, Ministry of Finance, as amended from time to time. The Contracting Authority shall deviate from the model documents referred in this sub-Rule only for the purpose of making the model documents suitable for a particular sector or PPP Project. All such deviations from the model tender documents shall be with the approval of PPPAC for Type I PPP Projects and relevant Approving Authority for Type II PPP Projects.

2. The RFQ document shall contain the following:

   (a) a description of the PPP Project, the estimated project cost and the project structure. This section shall also have the description and schedule of the Tender Proceedings;

   (b) the conditions of eligibility of Applicants, the information sought from Applicants for qualification and the form and procedure of the Application;

1 The estimated project cost shall form the basis for quantifying the financial criteria’s in RFQ document
(c) a description of the parameters and method of evaluating qualification of Applicants, the objective of the evaluation should be to identify Qualified Applicants that have the requisite capability to take up the PPP Project; and

(d) the criteria or conditions, if any, for the disqualification of Applicants, such as, Conflict of Interest, national security and other relevant considerations.

3. The Contracting Authority shall seek registration of interested parties prior to the issue of the RFQ document.

**Rule 63: Eligibility of Applicants**

For determining the eligibility of Applicants for their qualification here under, the following shall apply:

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

(b) An Applicant may be a natural person, or a private entity, or a combination thereof, or a combination with a government owned entity (provided that such government owned entity(ies) do not have a controlling interest in such combination) with a formal intent to enter into an agreement or under an existing agreement to form a consortium.

**Rule 64: Number of applications**

No Applicant shall submit more than one Application for the PPP Project. An Applicant applying individually or as a member of a consortium shall not be entitled to submit more than one application either individually or as a member of any consortium, as the case may be.

**Rule 65: Qualifying criteria**

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

2. 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) the Applicant’s ability to deliver against the physical aspects of the PPP Project and, importantly, its ability and track record in delivering services under long-term contractual arrangements. Criteria for evaluation of experience shall be defined in terms of any or all of the following, based on the nature of the PPP Project:

   (i) Minimum number of projects of more than a specified capacity developed/constructed/operated;

   (ii) Minimum number of projects of more than a specified Project Value developed/constructed/operated;
(iii) minimum number of contracts for operation and maintenance of similar facility; and

(iv) any other criteria suitable for the need of the PPP Project.

(c) the capability of the Applicant to invest the capital that would be needed for the PPP Project:

(d) the ability of the Applicants to secure adequate funds, since PPP Projects normally require the Concessionaire to finance a substantial part of the Project Value, if not the whole. A private entity with marginal profits and a weak balance sheet will be unlikely to secure the required finance on competitive terms or terms acceptable to the Appropriate Government.

(e) the ability of the Applicant to support the contractual arrangements over the contract term.

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

(a) net worth of the Applicant defined as the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders;

(b) average annual turnover defined as the simple average of sales figures of the Applicant for the immediately preceding three years derived from audited financial statements;

(c) average net cash accrual defined as the sum of profit after tax and depreciation for the immediately preceding three years derived from audited financial statements; and

(d) Any other criteria suitable for the need of the PPP Project.

4. Based on the nature of the PPP Project, the Contracting Authority may, in addition to the above, specify qualifying criteria in relation to the following areas:

(a) Existing commitment of the Applicant and capacity to deliver on the PPP Project in addition to the existing commitments;

(b) Proposed team of experts, if the PPP Project requires specialised technical expertise; and

(c) Experience of Applicant or the proposed team for working in local conditions. This aspect is critical if the local conditions have a material impact on the technical solution or operation of the proposed facility or service.

5. The Independent Monitor shall review the qualifying criteria.

Rule 66: Schedule of RFQ

The following minimum periods shall be followed by the Contracting Authority while determining the schedule of the qualification process:
(a) The Due Date shall be no later than 6 (six) weeks from the date of advertisement/notification of the RFQ;

(b) The Pre-application meeting shall be held not less than 2 (two) weeks before the Due Date;

(c) The clarifications on their queries of Applicants shall be issued not less than 2 (two) weeks before the Due Date; and

(d) Corrigenda or notifications of amendments in the RFQ shall be issued not less than 2 (two) weeks before the Due Date.

Rule 67: Removal of Conflict of Interest

The Contracting Authority may allow an Applicant, within 10 (ten) days after the Due Date, to remove from its consortium any member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

Rule 68: Opening of Applications

1. Subject to sub-Rule (2) of Rule 68:, the Contracting Authority shall open the Applications on the Due Date, and at the time and place and in the manner and procedure specified in the RFQ in the presence of Applicants who choose to attend.

2. The Contracting Authority may in exceptional circumstances defer the date for opening of the Applications and record in writing the reasons therefor.

3. Until the opening of the Applications, the Project Officer shall ensure that the Applications remain unopened and are stored in secure location.

4. All Applicants who have submitted Applications, or their representatives, shall be permitted by the Contracting Authority to participate in the opening of Applications.

Rule 69: Evaluation of Applications

1. Submitted RFQ Applications shall be evaluated by the Tender Evaluation Committee using the qualifying criteria as specified in the RFQ.

2. The Applicants shall be assessed on the basis of their respective aggregate experience scores and Applicants attaining aggregate experience scores beyond the pre-specified minimum threshold shall be qualified for submission of Bids or the next stage of the Tender Proceedings, as the case may be.

Rule 70: Notification of qualification

1. The Contracting Authority shall promptly notify each Applicant in writing whether or not it has been qualified.

2. The Contracting Authority shall make available to any person, the names of all Applicants that have been qualified.

3. Only Applicants who have qualified are entitled to participate further in the Tender Proceedings.
Rule 71: Registration of Potential Participants in Tender Proceedings

1. The Contracting Authority, may, at its discretion, singly or in conjunction with another Contracting Authority, register potential participants in Tender Proceedings ("Registerees") and maintain a database of their technical, financial and other such capacities as may be prescribed by the Contracting Authority ("the Database").

2. As and when the Contracting Authority initiates the Tender Proceedings for a PPP Project, if a Registeree intends to participate in the Tender Proceedings, it shall indicate such intention to the Contracting Authority.

3. At the time of indicating its intention in accordance with sub-Rule (2) of Rule 71:, the Registeree shall furnish an undertaking to the effect that there has been no material change in its technical, financial or other capacities, as the case may be, and that it is not otherwise disqualified or barred from participating in the Tender Proceedings.

4. Subject to sub-Rule (3) of Rule 71:, the Registeree shall not have to resubmit information that is already maintained on the Database.

5. Provided that registration in accordance with sub-Rule (1) of Rule 71: shall not be a prerequisite for participating in the Tender Proceedings for a PPP Project.

6. Subject to the condition that a Registeree shall not be eligible to avail of the benefit under sub-Rule (4) of Rule 71:, a Registeree may be free to participate in the Tender Proceedings:
   (a) if registered as a consortium, as an individual entity; and
   (b) if registered as an individual entity, as a member of a consortium

7. The Contracting Authority shall call upon Registerees to update the information on the Database once every year, but no later than 12 (twelve) months from the date on which such information was furnished, failing which the information on the Database shall no longer be valid for the purpose of Tender Proceedings.
CHAPTER VIII: REQUEST FOR TECHNICAL PROPOSAL

Rule 72: Applicability of Request for Technical Proposal (RTP)

An intermediate RTP Stage may be adopted prior to the RFP Stage. Such RTP Stage will be implemented in accordance with Rule 24: and the provisions contained in Chapter VIII:

Rule 73: Preparation of the RTP document

1. The Project Office shall prepare the RTP.

2. The RTP shall provide sufficient time to the Qualified Applicants to request any clarifications, and to prepare and submit Technical Proposals.

3. The RTP shall specify the minimum technical requirements, which will be formulated based on the Feasibility Study. The MTR shall be a description of what is sought to be achieved, but not the means by which it is to be achieved. The MTR shall necessarily include the following:

   (a) description of the scope of the PPP Project; which shall mean the physical facilities that need to be constructed, the capacity of each such facility or its component and related aspects;

   (b) output specifications; which shall mean the description of the target users, levels of service, quality standards and performance parameters;

   (c) construction requirements; which shall mean the design codes or standards that the facility must comply to, including for management of social and environmental impacts;

   (d) operation requirements; which shall mean the standards to be followed for operations of the facility and provision of service including standards for safety, security, labour relations, quality, monitoring, reporting and dissemination. This would also include required service levels to be offered to customers including waiting times, standards for grievance redressal;

   (e) maintenance requirements; which shall mean the maintenance standards and schedule for compliance; and

   (f) testing and performance monitoring requirements; which shall specify the tests that would be carried out for performance monitoring and the key performance indicators that would be monitored.

4. The RTP shall require the Qualified Applicants to submit responses on the technical solution, business solution and financial plan for implementing the PPP Project. The Contracting Authority shall define and document the specific requirements for Technical Proposal for each PPP Project in the RTP, which shall cover:

   (a) Basic information about the Qualified Applicant:

      (i) Corporate information about the Qualified Applicant;

      (ii) Constitutional documents of the Qualified Applicant;
(iii) Annual reports (if required);
(iv) Details about business activities- number of years of operation, certifications, tie ups and similar arrangements; and
(v) Other documents

(b) Experience of the Applicant, relevant to the PPP Project:
   (i) Details of the project experience; and
   (ii) Certificates and other documentation supporting the project experience;

(c) Approach and methodology for implementation of the PPP Project, including:
   (i) Understanding of the scope of work;
   (ii) Technical solution proposed/ approach for implementation of the PPP Project;
   (iii) Activity plan and schedule;
   (iv) Details of the facility or service proposed;
   (v) Brief construction plan; and
   (vi) Brief operations and maintenance plan;

(d) Business plan for implementation of the PPP Project, including:
   (i) Organisation structure of the Concessionaire;
   (ii) Marketing plan;
   (iii) Environmental and social impact management plan;
   (iv) Tie-ups and associations; and
   (v) Identification of risks and risk management plan; and

(e) Financial plan for implementation of the PPP Project, including:
   (i) Sources of finances and their expected boundary conditions;
   (ii) Plan for financial sustainability of the PPP Project; and
   (iii) Projected financials and key assumptions.

5. Each of the above set of parameters shall be assigned a maximum score. The maximum score allocated to the set of parameters shall be further subdivided for each of the parameter defined for evaluation of the Technical Proposal. Such definitions would need to be documented in the RTP.

6. The criteria or cut-off score for the pass/fail test based on Minimum Technical Requirements shall be pre-determined and specified in the RTP.
Rule 74: Issue of the RTP

The RTP shall be issued to all Qualified Applicant(s) with the prior written approval of PPPAC.

Rule 75: Schedule of RTP

The following minimum period shall be followed by the Contracting Authority while determining the schedule of the RTP process:

(a) The Due Date shall not be later than 6 (six) weeks from the date of advertisement/notification of the RTP;

(b) The Pre-qualification meeting shall be held not less than 3 (three) weeks before the Due Date;

(c) The clarifications on the queries of Qualified Applicants shall be issued not less than 2 (two) weeks before the Due Date; and

(d) Corrigenda or notifications of amendments in RTP shall be issued not less than 2 (two) weeks before the Due Date.

Rule 76: Technical Evaluation

1. The Contracting Authority shall determine the criteria for technical evaluation based on the nature of the PPP Project and the type of facility being developed and/or service being provided. The Contracting Authority shall specifically define the criteria for technical evaluation for each PPP Project which shall include parameters covering the following aspects of the Qualified Applicant:

(a) Basic information and review thereof to confirm the eligibility of the Qualified Applicant to bid for the PPP Project;

(b) Technical capability to implement the PPP Project;

(c) Evaluation of the project experience to assess the proven capacity of the Qualified Applicant to implement projects similar to the capacity and value of the PPP Project under development. The evaluation would focus on review of documents evidencing such experience, and shall also reconfirm the qualification of the bidders;

(d) Understanding of the scope of work;

(e) Technical solution proposed and adequacy of the same to provide the stated outputs while conforming to MTR by evaluation of the proposed approach and methodology of the Qualified Applicant. The technical solution proposed by the applicant shall be evaluated for:
   (i) Understanding of the Scope of Work and MTR;
   (ii) Conformity to MTR;
   (iii) Conformity to the prevalent legislations, rules and regulations;
   (iv) Suitability to the local conditions; and
(v) Sustainability over the contract period.

(f) Proposed business plan for implementing the PPP Project: Evaluation of the business plan for implementation of the PPP Project to ensure that the technical solution proposed as the approach is translated into a plan that can be implemented and monitored. The evaluation will address whether the specific components of the proposed business plan are adequate for the project scope and whether they conform to the MTR and applicable laws and regulations;

(g) Capacity for investment: The evaluation of this part of the Technical Proposal should assess whether the preceding activity forecasts, operational and investment projections and acquisition plans are synthesized into a realistic financial model, and whether the Bidder has the capacity to implement the financial plan and arrange funds adequate for implementing the project.

2. The marks allocated for each of the above parameters shall be aggregated to calculate a single score.

**Rule 77: Notification of passed Technical Proposals to Qualified Applicants**

1. The Contracting Authority shall promptly notify each Qualified Applicant whether or not the Technical Proposal submitted by it has passed.

2. The Contracting Authority shall also make available to any person the names of all Qualified Applicants whose Technical Proposals have passed.

3. Only Qualified Applicants whose Technical Proposals have passed are entitled to participate further in the Tender Proceedings.

**Rule 78: Combining Request for Technical Proposal with Request for Proposal**

1. The Contracting Authority may combine the RTP Stage with the RFP Stage:

   (a) to ensure price competition through adequate number of Bids in case where the number of Bidders is expected to be low; and

   (b) to optimize cost and effort when the PPP Project does not merit a separate stage of RTP.

2. In such an event, the Technical Proposal shall be invited along with the Bid in response to a RFP. The Technical Proposal and Bid shall be submitted in separate sealed envelopes. The Tender Evaluation Committee shall open only the Technical Proposal for evaluation on receipt. The Technical Proposal shall be evaluated based on the parameters announced in the RFP and the Final Offers of only the technically qualified Bidders (as defined in Rule 76:) shall be evaluated as per the terms and conditions of Chapter IX.

3. In the event that RTP stage is proposed to be combined with the RFP stage, the Contracting Authority shall ensure that the provisions of Chapter VIII are reflected in the RFP to be prepared in conformance with Chapter IX.

4. In such event:
(a) on the opening of the Technical Proposals by the Tender Evaluation Committee, the members of the Tender Evaluation Committee and the representatives of the Qualified Applicants present at the opening of the Technical Proposals, shall affix their signatures on the opened Technical Proposals;

(b) the members of the Tender Evaluation Committee and the Qualified Applicants present at the opening of the Technical Proposals shall also affix their signatures on the unopened Bids; and

(c) the Tender Evaluation Committee shall place the unopened Bids in a larger envelope/or box which shall be sealed and duly signed/stamped by the members of the Tender Evaluation Committee and the Qualified Applicants present at the opening of the Technical Proposals.
Chapter IX: REQUEST FOR PROPOSAL

Rule 79: Request for Proposal

1. The Project Officer shall prepare the RFP and the Draft Concession Agreement.

2. The RFP shall formally solicit binding Final Offer from Bidders.

3. The Project Officer shall adopt the Model Request for Proposal for PPP Projects dated November 30, 2007 issued by PF-II Section, Department of Expenditure, Ministry of Finance, as amended from time to time. The Contracting Authority shall deviate from the model documents referred in this sub-Rule only for the purpose of making the model documents suitable for a particular sector or PPP Project. All such deviations from the model tender documents shall be with the approval of PPPAC for Type I PPP Projects and relevant Approving Authority for Type II PPP Projects.

4. The Request for Proposal shall necessarily have the following components:

   (a) Feasibility Report/ Project Information Memorandum:

   This component of the RFP is directed towards providing such information to Bidders that is adequate for them to evaluate the PPP Project and estimate their Final Offer. Such information would include, but would not be limited to:

   (i) Project objectives and rationale;

   (ii) Site details;

   (iii) Role of the Appropriate Government, key agency and stakeholders;

   (iv) Project scope in accordance with Rule 80: and

   (v) Output specifications;

   (b) Instruction to Bidders:

   This component of the RFP is directed towards defining the process of Bid submission and evaluation. This section shall include all procedures, terms and conditions which should be followed by the Bidders for submission of their Bids and which would be followed by the Contracting Authority in accepting and evaluating the Bids;

   (c) The draft Concession Agreement which shall govern the contractual relations between the Concessionaire and Contracting Authority. The draft Concession Agreement shall contain rights and obligations of both the parties, definition of the subject matter of the agreement, payment terms, performance obligations, defaults and their consequences, events of termination and other ancillary clauses. The provisions of the draft Concession Agreement shall necessarily cover:

   (i) Recitals- identifying the parties to the contract, offer and acceptance;

   (ii) Definitions- defining the key terms of the contract to ensure uniformity of usage and interpretation throughout the document;

   (iii) Scope of the PPP Project;
(iv) Grant of concession, whereby the Contracting Authority grants the concession to the Concessionaire subject to the terms and conditions of the Concession Agreement;

(v) Conditions precedent;

(vi) Obligations of the Concessionaire;

(vii) Obligations of the Contracting Authority;

(viii) Representations and warranties of both the parties;

(ix) Form and value of Performance Security to be submitted by the Concessionaire;

(x) Matter related to the site;

(xi) The construction of the facility including minimum technical requirements thereof, date for completion of construction etc.;

(xii) Performance monitoring during construction including key performance indicators, monitoring responsibilities and related provisions;

(xiii) Completion of construction including provisions for testing, approval and certification;

(xiv) Change in scope during the contract period;

(xv) Operation and maintenance of the facility and provision of service including minimum technical requirements;

(xvi) Performance monitoring during operations and maintenance including key performance indicators, monitoring and reporting responsibilities and related provisions;

(xvii) Appointment, role and functions, remuneration and reporting requirements of Independent Engineer;

(xviii) Financial close;

(xix) Grant or revenue share/ premium;

(xx) Payments by users, authority for tariff fixation, procedure of revision of tariff and related provisions;

(xxii) Collection of user charges, including allocation of the authority to collect and retain user charges;

(xxiii) Financial aspects of the contract including escrow account, other payments between the parties to the contract;

(xxiv) Maintenance of books of accounts and audit requirements;

(xxv) Insurance;
(xxv) Force Majeure – definition, procedure for recognition under the contract, consequences and compensation on termination due to occurrence of Force Majeure events;

(xxvi) Events of default and consequences of default;

(xxvii) Termination of the contract and consequences of termination;

(xxviii) Assignments and charges;

(xxix) Change in law including consequences for change in law;

(xxx) Liability and indemnity; and

( xxxi) Dispute resolution.

Rule 80: Project Scope

1. The Contracting Authority shall set out the detailed description of the PPP Project and the project scope in the RFP.

2. To the extent practicable, the description of the PPP Project and project scope shall be objective, functional and generic, and shall set out the relevant technical, quality and performance characteristics expected. There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the project scope and specifications and provided that words such as “or equivalent” are included.

Rule 81: Evaluation Criteria

1. The Contracting Authority shall select a Preferred Bidder solely on the basis of highest or the lowest Final Offer, as specified in the RFP.

2. The criterion specified in the RFP may be:

   (a) grant sought,

   (b) expected revenue,

   (c) tariff,

   (d) present value of lifecycle cost,

   (e) period of the concession,

   (f) upfront premium,

   (g) equity stake,

   (h) extent/share of subsidized facilities to the Contracting Authority;

   (i) revenue share
3. The RFP shall clearly and specifically define the form and content of the Final Offer and state that Preferred Bidder shall be selected on the basis of the most advantageous Final Offer.

**Rule 82: Schedule of Bid Process**

The following minimum periods shall be followed by the Contracting Authority while determining the schedule of the RFP Stage:

(a) The Due Date shall be no later than 6 (six) weeks from the date of advertisement/notification of the RFP;

(b) The pre-Bid meeting shall be held not less than 3 (three) weeks before the Due Date;

(c) The clarifications on the queries of Bidders shall be issued not less than 2 (two) weeks before the Due Date; and

(d) Corrigenda or notifications of amendments in RFP or Draft Concession Agreement shall be issued not less than 2 (two) weeks before the Due Date.

**Rule 83: Obtaining approval to proceed with issue of RFP**

1. Prior to the issuance of the RFP and the Concession Agreement to all Bidders, the Contracting Authority shall obtain an approval:

   (a) from PPPAC, as per “Guidelines for Formulation, Appraisal and Approval of Central Sector Public Private Partnership Projects”, notified by the Ministry of Finance, Department of Economic Affairs vide OM No. 1/5/2005 – PPP dated January 12, 2006 and as suitably amended from time to time, for Type I PPP Projects; and

   (b) from the Approving Authority before issuing the RFP and the Draft Concession Agreement in the case of Type II PPP Projects.

2. In case of all Type I PPP Projects, the Contract Authority:

   (a) shall obtain approval of the Approving Authority upon receiving approval from PPPAC; and

   (b) may invite Bids upon approval of PPPAC and pending approval of the Approving Authority. In such an event, the Due Date shall be only after receipt of the final approval from the Approving Authority.

**Rule 84: Data room**

1. The Contracting Authority shall maintain a data room where project-specific information shall be kept.

2. All Bidders shall be allowed to access the data room during reasonable working hours. The data room will be maintained by the Contracting Authority until the completion of the RFP Stage.
3. The data room shall be maintained in a single location, for a limited period of time, where the Bidders shall be permitted only to review such documents, which otherwise are not allowed to be distributed.

4. The location and rules for accessing the data room should be stated in the RFP.

5. The Contracting Authority may also provide a virtual data room through a secure website where project-specific information can be accessed online by authorised viewers.

Rule 85: Site visit

1. If the PPP Project involves important site-related issues, a site visit shall be organised early in the RFP Stage.

2. All Bidders shall be invited to undertake the site visit.

Rule 86: Change in composition of consortium

1. Where the Bidder is a consortium, change in the composition of a consortium may be permitted by the Contracting Authority prior to the Due Date, only where:
   (a) The application for such change is made no later than 15 (fifteen) days prior to the Due Date;
   (b) The lead member of the consortium remains unchanged;
   (c) The substitute is at least equal, in terms of technical capacity, to the consortium member who is sought to be substituted and the modified consortium continues to meet the pre-qualification and short-listing criteria for the Tender Proceedings;
   (d) The new member(s) expressly adopt(s) the Responses already made on behalf of the consortium as if party to it originally, and
   (e) The new member(s) does not have a Conflict of Interest in terms of Rule 41:

2. Approval for change in the composition of a consortium shall be at the sole discretion of the Contracting Authority and shall be communicated by the Contracting Authority to the Bidder in writing.

3. The modified/ reconstituted consortium shall submit a revised joint bidding agreement before the Due Date.

Rule 87: Effectiveness of Bids

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

2. Prior to the expiry of the period of effectiveness of Bids, the Contracting Authority 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.

3. If a Bidder agrees to extend the period of effectiveness of its Bid, the Contracting Authority 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.
4. If a Bidder has not extended the Bid Security, or has not provided a fresh Bid Security, it shall be considered as refusal of the request to extend the period of effectiveness of its Bid.

**Rule 88: Opening of Bids**

1. Subject to sub-Rule (2) of Rule 88:, the Contracting Authority 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.

2. The Contracting Authority may in exceptional circumstances defer the date for opening of the bids and record in writing the reasons therefor.

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

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

**Rule 89: Evaluation of Bids**

1. Evaluation of submitted Bids shall be carried out by the Tender Evaluation Team, assisted by the transaction advisor where necessary. The Bid evaluation shall follow the pre-determined criteria as specified in the RFP.

2. The Independent Monitor shall be present for all Bid evaluation meetings and minutes of the proceedings of Bid evaluation shall be maintained as part of record of Tender Proceedings.

**Rule 90: Prohibition of negotiations**

No negotiations shall take place between the Contracting Authority and a Bidder with respect to a Bid submitted by the Bidder.

**Rule 91: Selection of the Preferred Bidder**

1. All Bids adjudged responsive shall be ranked in accordance with the evaluation criteria specified in RFP and the first ranked Bidder shall be the Preferred Bidder.

2. In the event that the first ranked Bidder withdraws or is not selected for any reason, in the first instance (the “first round of bidding”), the Contracting Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid first ranked Bidder (the “second round of bidding”).

3. 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.
4. In the event that no Bidder offers to match the said first ranked Bidder in the second round of bidding as specified under this Rule, the Contracting Authority may in its discretion, either initiate a new Tender Proceeding or abandon the PPP Project.

5. The results of evaluation of Bids along with the report of Independent Monitor shall be submitted to the Approving Authority, or to such competent entity to which power for approval has been delegated specifically, for approval.

6. The Preferred Bidder shall be notified by the Contracting Authority after obtaining approval of the Approving Authority or from such competent entity to which power for approval has been delegated specifically.

7. Simultaneous with the receipt of approval of the Approving Authority, the Contracting Authority shall communicate to other Bidders about the selection of the Preferred Bidder, and its intention to execute the Concession Agreement with the Preferred Bidder.

8. After selection, a letter of award (the “Letter of Award”) shall be issued, in duplicate, by the Contracting Authority 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.

Rule 92: Treatment of sole Bid

1. In case of the competitive bidding process resulting into a sole Bid, the Contracting Authority shall, either:
   
   (a) accept the sole Bid, if the Tender Evaluation Committee is of the opinion that retendering will not yield more Bids and there is a clear value for money in accepting the sole Bid, or
   
   (b) reject the sole Bid.

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

Rule 93: Treatment of two equal Bids

In the event that two or more Bidders have quoted the same Final Offer, Contracting Authority shall identify the Preferred Bidder by adopting one of the following approaches, which shall be pre-specified in the Tender Documents:

(a) 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; or

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2 At present model RFP provides for draw of lots, to be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
(b) 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.

**Rule 94: Treatment of speculative Bids**

1. The Contracting Authority may reject a Bid if it has determined that the Final Offer in combination with other constituent elements of the submission is abnormally low or abnormally high in relation to the subject matter of the procurement and raises concerns with the Contracting Authority as to the ability of the Bidder that presented that submission to perform the PPP contract, provided that the Contracting Authority has:
   
   (a) requested in writing from the Bidder details of the submission that gives rise to concerns as to the ability of the Bidder to perform the PPP contract; and
   
   (b) taken account of any information provided by the Bidder following this request, and the information included in the submission, but continues, on the basis of all such information, to hold concerns.

2. The decision of the Contracting Authority to reject a submission in accordance with this Rule and the reasons for that decision, and all communications with the Bidder under this Rule, shall be included in the record of the Tender Proceedings. The decision of the Contracting Authority and the reasons therefor shall be promptly communicated to the Bidder concerned.

**Rule 95: Contract finalization and award**

1. Subject to fulfilment by the Preferred Bidder of the requirements specified in the RFP and of the LOA, the Contracting Authority shall execute the Concession Agreement with the Preferred Bidder.

2. Except as provided Rule 92;, the Contracting Authority shall not engage in negotiations on or modifications to the draft Concession Agreement as per the RFP.
Rule 96: Contract Management Team

1. The Contracting Authority shall constitute a Contract Management Team headed by a contract management director and assisted by a team with financial, technical and legal capabilities.

2. The CMT shall be constituted on or prior to the date of issue of the LOA to the Preferred Bidder.

3. The Project Officer shall provide all documents and communications including the procurement report in relation to the PPP Project to the CMT.

4. The Project Officer shall be a member of the CMT at least, until the execution of the Concession Agreement.

Rule 97: Empowered Review Cell

1. The relevant Central Ministry or State Government Department, as the case may be, shall set up an Empowered Review Cell.

2. The Empowered Review Cell shall have sufficient capacity, resources and skills to monitor the project.

3. The Empowered Review Cell shall be headed by an officer not below the rank of Joint Secretary.

4. In case a PPP cell exists in the respective Ministry/Department, it may serve as the Empowered Review Cell.

Rule 98: Responsibility of the CMT

1. The CMT shall be responsible for formulation and monitoring of the implementation of the Contract Management Plan.

2. The personnel of CMT shall spend at least two days at the project site during every two months and shall interact with user representatives during such visits.

3. The responsibilities of the CMT shall include monitoring of:

   (a) Fulfilment of Conditions Precedent and achievement of the Appointed Date under the Concession Agreement;

   (b) Adherence to timelines and other obligations specified in the Concession Agreement;

   (c) Adherence to the performance standards specified in the Concession Agreement;

   (d) Adherence to reporting procedures between the Concessionaire and the Contracting Authority, including project MIS;

   (e) Periodic measurement and testing as required under the Concession Agreement;

   (f) Remedial measures and action plan for curing defaults;
(g) Imposition of penalties in the event of default;

(h) Levy and collection of user charges based on approved principles;

(i) Progress of on-going disputes and arbitration proceedings, if any; and

(j) Compliance with instructions of the Contracting Authority or the Independent Engineer;

4. The CMT shall provide a periodic report, to Contracting Authority.

5. The Contracting Authority shall submit an Achievement and Exception Report to Empowered Review Cell on a quarterly basis.

Rule 99: Responsibility of the Empowered Review Cell

1. The Empowered Review Cell shall study the Achievement and Exception reports of the Contracting Authority for the assigned PPP project(s).

2. The Empowered Review Cell shall issue direction(s) to Contracting Authority for rectifying any defaults or lapses and/or taking any necessary action and oversee the same.

3. The Empowered Review Cell shall submit a half-yearly report to the PPPAC, for Type I PPP Projects, and to the relevant Approving Authority for Type II PPP Projects, which shall include:

   (a) A compliance report regarding implementation of the various PPP Projects as per the provisions of the respective contracts, especially performance standards or loss to the public exchequer and the users;

   (b) An exception report highlighting issues where remedial action is to be taken for enforcing the provisions of the respective contracts;

   (c) A review of the grievances’ of users and the manner and extent of their redressal;

   (d) Matters affecting the interests of the public exchequer in relation to the expenditures and revenues arising from the PPP Project; and

   (e) The steps taken or required to be taken by the Contracting Authority in accordance with the Concession Agreement.

4. In addition, the Empowered Review Cell shall cause to be conducted an evaluation of the project performance, including a social audit, wherever applicable, once every two years.

Rule 100: Appointment and role of Independent Engineer

1. The Contracting Authority shall appoint an Independent Engineer.

2. The Independent Engineer shall have the responsibility of supervising the Concession Agreement which shall include, as applicable:
Reviewing, inspecting and monitoring of construction works, examining the designs and drawings and conducting tests and issuing completion certificates during the construction period;

Reviewing and inspecting the operations and maintenance arrangements, and monitoring compliance with the performance and maintenance standards, during the operations period;

Identifying delays and lapses that require action on part of the Contracting Authority for enforcing the agreement terms;

Determining the reasonableness of costs for any works or services, as required under the Concession Agreement;

Determining the period or extension thereof, for performing any duty or obligations, as required under the PPP or Concession Agreement;

Carrying out such responsibilities as are assigned, by the Contracting Authority.

3. The Independent Engineer shall prepare and submit to the CMT a monthly progress report.

4. An indicative scope of work for the Independent Engineer is provided for guidance in Appendix A. 11.

Rule 101: Role of Lead Financial Institution

The Contracting Authority shall cause the Concessionaire to identify the lead financial institution (“the Lead Financial Institution”) and ensure submission of quarterly report by Lead Financial Institution on the following:

(a) Financial progress, and

(b) Statement of debt and equity contribution, and

(c) Any other relevant financial information, as required.

Rule 102: Contract Management Plan

1. The CMT shall prepare a contract management plan (the “Contract Management Plan”) which shall

(a) define the processes that enable both parties to meet their obligations;

(b) monitor performance by the Parties of their respective obligations under the Concession Agreement;

(c) manage differences through proactive relationship management;

(d) manage unanticipated developments and mitigating risks through efficient risk management; and

(e) resolve disputes in an expeditious manner, with minimal impact on service delivery.
2. The Contract Management Plan shall serve as a repository of management procedures and a resource tool, and shall include:
   
   (a) The contract and its schedules;
   
   (b) All financing agreements as well as financial models;
   
   (c) The names, roles and contact details of key individuals of both parties;
   
   (d) Implementation plan during development, construction, operations and exit phases;
   
   (e) Performance management plan;
   
   (f) Risk management plan;
   
   (g) Financial and contract administration plan;
   
   (h) Relationship management and Contingency plan; and
   
   (i) Contract Termination and Handover plan.

3. The CMT shall prepare the Contract Management Plan by incorporating the principles specified in Appendix A. 12.

**Rule 103: Treatment of variation**

1. Changes which occur during the course of project development and delivery and shall be classified into the following forms:
   
   (a) Day-to-day operational variations;
   
   (b) Known- variations that are likely to arise and whose nature is known, but time of occurrence and impact are unknown;

2. Day-to-day operational variation issues which have no material impact on the project variables should be managed by the Concessionaire. Any day-to-day variation which are likely to have a material impact on the project variables such as project cost and delivery schedules should be promptly notified to the CMT.

3. The Contracting Authority shall specify in the Concession Agreement the procedure for amending the Concession Agreement as a consequence for known- variations, and day-to-day operational variations that are likely to have a material impact on the PPP Project. The CMT shall monitor the implementation of the provisions of the Concession Agreement.

4. Procedures for amendment consequent upon variations should be designed keeping in mind the nature of variation and its impact on contract terms, i.e. large impact variations to require greater resource allocation along with more accountability. In case of material variations in contract terms, value for money analysis shall also be undertaken for the same.

5. It shall be the responsibility of CMT to:
(a) Ensure party proposing an amendment consequent upon variation justifies it with adequate evidence and related costs;

(b) Validate that the proposed amendments consequent upon variation are in accordance with procedures laid down in the Concession Agreement;

(c) Maintain a register of all amendments consequent upon variation throughout the project lifecycle;

(d) Promote effective communication to have a shared understanding of implications of any amendments consequent upon variation between contracting parties; and

(e) Ensure that timing for all amendments consequent upon variation are mutually agreed to, and take steps to ensure that variation management process outlined in the contract is followed by all contracting parties.

6. The Contracting Authority shall obtain approval for all amendments to terms of Concession Agreement:

   (a) from PPPAC and subsequently the Approving Authority, for Type I PPP Projects; and

   (b) from the Approving Authority in the case of Type II PPP Projects.

Rule 104: Exit strategy for continued service delivery

1. The Contracting Authority shall ensure that the Concession Agreement provides for a hand back and exit strategy for PPP Projects. Such an exit strategy shall include:

   (a) Review of options to ensure service continuity;

   (b) Assessment of operations and maintenance needs, asset/service quality;

   (c) Testing and valuation of assets;

   (d) Implementation plan for handing back PPP Project to Contracting Authority;

   (e) Resource allocation for implementing the exit strategy; and

   (f) Obligation of the parties in relation to the exit strategy.

2. The CMT shall be responsible for implementation of exit strategy at the end of contract term.
Chapter XI: AUDIT OF THE PPP PROJECT

Rule 105: Approach to Audit

1. An audit of Contracting Authority by the competent auditing authority shall be in accordance with the provisions contained in these Rules.

2. The scope of the audit shall include the following:
   (a) the compliance to these Rules by Contracting Authority;
   (b) the procedures observed in releasing payments from the public sector from time to time, provision of guarantees from the public sector and/or managing Contingent Liabilities;
   (c) adherence to the Concession Agreement in terms of ensuring fulfilment of conditions precedent, performance assessments, imposition of penalties for non-performance and reckoning of termination payments;
   (d) exercise of its rights by Contracting Authority under the Concession Agreement;
   (e) fulfilment of obligations by Concessionaire under the Concession Agreement; and
   (f) any change or modification in Concession Agreement not in accordance with the PPP Rules

3. For the purpose of audit, the Contracting Authority shall make available the following documentation and information
   (a) data and documents, relating to the Bids, Bid evaluation and the proceedings of the Contracting Authority;
   (b) Concession Agreement;
   (c) reports submitted by the Independent Engineers, Independent Monitors and independent auditors, as the case may be;
   (d) all communication and documentation providing for the exception circumstances that relating to post award negotiations and/or contract modifications.

4. The decision to implement a project on PPP basis and choice of the PPP structure approved by the Approving Authority shall not be subject to audit.

Rule 106: Responsibility of Contracting Authority

The Contracting Authority shall maintain such documents as required for the purpose of Rule 105.:
Chapter XII: DISSEMINATION OF INFORMATION

Rule 107: Responsibility of Information Dissemination

1. The Contracting Authority shall make available information regarding the PPP Project to general public, such that it meets the provisions of Right to Information Act, 2003, and demands of transparency. For the purpose, it shall:

   (a) document all the information in relation to the contract, construction, project operation and maintenance and termination;

   (b) carry out information audit with inputs from the private entity as to what information can be shared in light of exception clauses of the RTI act, including those related to third party rights and involving proprietary rights; and

   (c) document the reason for declaring information as commercially sensitive and therefore not subject to disclosure.

2. Contracting Authority shall cause to be included in the Concession Agreement effective norms for disclosure and sharing of information by the private entity which is not detrimental to the interests of the private entity.

3. A soft copy or electronic copy of the documents subject to disclosure under these Rules shall be placed on the website of the Contracting Authority or on the website of the Central Government or State Government or relevant government authority within whose administrative jurisdiction the Contracting Authority reports.

4. Information including commercial in-confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of the Bidders/Preferred Bidder, shall be exempt from disclosure. Such information shall not be disclosed unless the Contracting Authority is satisfied that larger public interest warrants the disclosure of such information. In such cases, the redacted documents shall be publicly disseminated.

Rule 108: Public dissemination of information following in-principle approval

The Contracting Authority shall disseminate the following information for the PPP Project granted in-principle approval in accordance with Rule 30:

(a) pre-Feasibility Study, if it has been prepared;

(b) Feasibility Study; and

(c) any other relevant information that the Contracting Authority may choose to disclose.

Rule 109: Public dissemination of information following signing of the Concession Agreement

The Contracting Authority shall disseminate the following information for the PPP Project for which it has signed Concession Agreement:

(a) All Tender Documents and minutes of pre-Bid meetings;
(b) Summary note providing a brief description of the tender proceedings, the selection process, and the basis for qualification and selection of the Preferred Bidder;

(c) Major milestones to be achieved and their status; and

(d) Any other relevant information that the Contracting Authority may like to disclose.

**Rule 110: Public Dissemination of Information after Financial Close of the PPP Project**

The Contracting Authority shall disseminate the following information for the PPP Project after it has achieved Financial Close:

(a) The Concession Agreement, along with all annexure and schedules;

(b) Other project agreements that have been signed by the Preferred Bidder and a government entity in relation to the PPP Project, as applicable, such as the state support agreement, substitution agreement, any agreement related to operations, maintenance and development agreement, technical operations agreement (if applicable.), land lease agreement;

(c) Documents related to selection of Independent Engineers and/or Auditors, and any agreement for appointment of Independent Engineer and/or Auditors;

(d) Major milestones to be achieved and their status; and

(e) Any other relevant information that the Contracting Authority may like to disclose.

**Rule 111: Public Dissemination of Information during Construction and Operations Phase**

The Contracting Authority shall disseminate the following information for the PPP Project that it has contracted out, after the commencement of construction:

(a) Reports of the Contract Management Team, related to progress of the PPP Project;

(b) Inspection reports and quality reports submitted by the Independent Engineers;

(c) Documents relating to outside quality inspectors, if appointed;

(d) Records relating to commercial and land developments;

(e) Audited annual report of the PPP Project Company;

(f) Major milestones to be achieved and their status;

(g) Results of any surveys related to service delivery and user satisfaction, if any; and

(h) Any other relevant information that the Contracting Authority may choose to disclose.

**Rule 112: Public Dissemination of Information Following Termination of the Concession Agreement**

The Contracting Authority shall disseminate the following information for the PPP Project following termination of the Concession Agreement:

(a) Termination of the PPP Project;
(b) Details regarding the continuance of service plan;
(c) Completion of objective of the PPP Project and deviations, if any;
(d) Valuation of residual assets;
(e) Performance of the PPP Project and deviations from envisaged parameters if any.
(f) Any other relevant information that the Contracting Authority may choose to disclose.
## A. 1. DELEGATION OF POWER WITH RESPECT TO PPP PROJECTS

<table>
<thead>
<tr>
<th>Type of PPP Project</th>
<th>Financial Limits (Rupees in crore)</th>
<th>Appraisal forum</th>
<th>Approval forum</th>
</tr>
</thead>
<tbody>
<tr>
<td>All PPP Projects of Central Ministries or Central PSEs, statutory authorities or other entities under their administrative control</td>
<td>Less than Rs. 25 crore</td>
<td>Ministry in Normal Course</td>
<td>Secretary of Ministry/Department</td>
</tr>
<tr>
<td></td>
<td>Rs. 25 crore and up to Rs. 100 crore</td>
<td>SFC</td>
<td>Minister-in-Charge</td>
</tr>
<tr>
<td>PPP Projects of All Sector</td>
<td>more than Rs. 100 crore but less than Rs. 250 crore.</td>
<td>Committee, Comprising a) Secretary, Department of Economic Affairs (b) Secretary of the Ministry /Department sponsoring the PPP Project</td>
<td>for PPP Projects less than Rs. 150 crore Minister-in-Charge and Finance Minister, for PPP Projects of Rs. 150 crore or above CCEA</td>
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<tr>
<td></td>
<td>More than Rs. 250 crore</td>
<td>PPPAC</td>
<td>CCEA/CCI</td>
</tr>
<tr>
<td>PPP Projects under NHDP</td>
<td>Rs. 250 crore or more but less than Rs. 500 crore</td>
<td>Committee, Comprising (a) Secretary, Department of Economic Affairs (b) Secretary, DORTH</td>
<td>CCEA/CCI</td>
</tr>
<tr>
<td></td>
<td>More than Rs. 500 crore</td>
<td>PPPAC</td>
<td>CCEA/CCI</td>
</tr>
<tr>
<td>PPP Project of Government Entities other than Listed in (a) above Requiring Capital Grant from Government of India</td>
<td>All</td>
<td>Relevant Appraisal Authority</td>
<td>Relevant Approving Authority</td>
</tr>
</tbody>
</table>

CCI: Cabinet Committee on Infrastructure

CCEA: Cabinet Committee on Economic Affairs
PPPAC: Public Private Partnership Appraisal Committee
SFC: Standing Finance Committee. The composition of SFC is as follows:

- Secretary of the Administrative Ministry, Chairman
- Financial Adviser, Member
- Joint Secretary of the concerned Division, Member
- Representative of the Department of Legal Affairs, Member
- Representative of Planning Commission and any other Ministry/Department may also be invited, if required

Appropriate forum for Modification of Model Tender Documents

<table>
<thead>
<tr>
<th>Type of PPP Project</th>
<th>Approval Forum For Modification of Model RFQ</th>
<th>ApprovalForum For Modification of Model RFP</th>
<th>Approval Forum For Modification of Model MCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>All PPP Projects of Central Ministries or Central CPSEs, statutory authorities or</td>
<td>PPPAC</td>
<td>PPPAC</td>
<td>PPPAC</td>
</tr>
<tr>
<td>other entities under their administrative control</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PPP Project of Entities other than Listed in (a) above, Requiring Capital Grant</td>
<td>Relevant Approving Authority</td>
<td>Relevant Approving Authority</td>
<td>Relevant Approving Authority</td>
</tr>
<tr>
<td>from Government of India</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
A. 2. FORMAT FOR APPLICATION TO DEA FOR REGISTRATION OF PPP PROJECTS

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Date of Application:</td>
</tr>
<tr>
<td>2</td>
<td>PPP Project Name:</td>
</tr>
</tbody>
</table>
| 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 Contracting Authority’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:  
   - Please add more details as an annexure to this form |
| 8 | Brief description of land acquisition and resettlement requirements, community consultation undertaken, 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 |

<table>
<thead>
<tr>
<th></th>
<th>Option A</th>
<th>Option B</th>
<th>Option C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical and operational features</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land &amp; resettlement issues</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental and social aspects</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Likely interest from private entities</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| 11 | Affordability, (user charges, annuity, potential grants and other forms of financial support) |
| 12 | Recommendation on the preferred option: |</p>
<table>
<thead>
<tr>
<th></th>
<th>Proposed procurement method and plan (with indicative timelines):</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Commitment of responsible parties:</td>
</tr>
<tr>
<td></td>
<td>Briefly describe the involved parties (line departments and other institutions), their roles and responsibilities, and confirmation of their agreement to perform the tasks required</td>
</tr>
<tr>
<td>15</td>
<td>Designated Project Officer/Project Management Team with contact details including email address</td>
</tr>
</tbody>
</table>
### A. 3. FORMAT FOR PRE-FEASIBILITY REPORT

<table>
<thead>
<tr>
<th>No</th>
<th>Information to be covered in the pre-feasibility report</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Technical and operational practicality of the PPP Project concept - preliminary analysis:</td>
</tr>
<tr>
<td>1a</td>
<td>The engineering and technical aspects of the PPP Project</td>
</tr>
<tr>
<td>1b</td>
<td>The manageability of the operational aspects of the PPP Project</td>
</tr>
<tr>
<td>1c</td>
<td>Preliminary assessment of all likely technical and operational risks</td>
</tr>
<tr>
<td>2</td>
<td>Environmental and social safeguard activities (and related reports)</td>
</tr>
<tr>
<td>2a</td>
<td>Socio-economic assessment and analysis</td>
</tr>
<tr>
<td>2b</td>
<td>Environmental assessment scoping</td>
</tr>
<tr>
<td>3</td>
<td>Financial and economic viability of the PPP Project concept - preliminary assessment:</td>
</tr>
<tr>
<td>3a</td>
<td>The cost recovery/income generation assumptions of the PPP Project</td>
</tr>
<tr>
<td>3b</td>
<td>Likely interest of private entities in the PPP Project</td>
</tr>
<tr>
<td>3c</td>
<td>The overall PPP Project cost (capital + operations + maintenance)</td>
</tr>
<tr>
<td>3d</td>
<td>Possible financial risks</td>
</tr>
<tr>
<td>3e</td>
<td>Identification of likely economic benefits generated by the PPP Project</td>
</tr>
<tr>
<td>4</td>
<td>Possible arrangements for the participation of private entities:</td>
</tr>
<tr>
<td>4a</td>
<td>Role of the private entity (direct or indirect investment, Joint Venture Partner, etc)</td>
</tr>
<tr>
<td>4b</td>
<td>Legal feasibility analysis and contractual framework for the PPP arrangement</td>
</tr>
<tr>
<td>4c</td>
<td>Outline procedure for ensuring competition in the selection of the private partner(s)</td>
</tr>
<tr>
<td>4d</td>
<td>Legal documentation required to allow participation of the private partner(s)</td>
</tr>
<tr>
<td>5</td>
<td>Next Steps:</td>
</tr>
<tr>
<td>5a</td>
<td>Resources required to complete the project preparation process</td>
</tr>
<tr>
<td>5b</td>
<td>Parties responsible for completing next steps</td>
</tr>
<tr>
<td>5c</td>
<td>Roles and responsibilities of involved parties</td>
</tr>
<tr>
<td>5d</td>
<td>Time frame required for completing project preparation</td>
</tr>
</tbody>
</table>
A. 4. FORMAT FOR FEASIBILITY STUDY REPORT

1) Executive Summary

Part A: Feasibility Assessment

2) Project background

3) Strategic needs assessment, demand assessment and project scoping

4) Service standard – output and services

5) Market assessment

6) Technical feasibility

7) Financial feasibility

8) Environment impact

9) Legal framework

10) Stakeholder consultation findings and public interest evaluation

11) Public sector comparator, value for money and recommendations

12) Conclusion and recommendations on feasibility assessment

Part B: Structuring

13) Risk assessment

14) Key commercial principles and payment mechanisms

15) Evaluation criteria for selection of the private entity

16) Implementation plan

17) Project resource requirement

18) Conclusion and recommendations on structuring

Appendixes (other supporting documents)
The content of the Feasibility Study report is discussed in detail below.

1. **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 A: Feasibility Assessment**

1. **Project Background**
   
   This section should provide a background on the project location, type of infrastructure, the Contracting Authority, previous studies undertaken, and previous approvals received etc.

2. **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.

   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.

3. **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 in measurable and quantifiable terms as far as possible;
   
   (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 Contracting Authority’s long-term strategic goals and overall national development plan.

4. 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 Contracting Authority 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.

5. Technical Feasibility

This component 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 inputs 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.

6. Financial Feasibility

This component 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 capex, cost of upgrades, opex);
(b) Start-up capital;
(c) Sources of financing;

(d) Potential revenues;

(e) Estimated returns; and

(f) Consulting costs.

7. **Environment Impact**

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

8. **Legal Framework**

This component examines the suitability of existing legislative environment for the execution and running of the PPP Project, as well as any licences or requirements that potential service providers need to comply with. The study should address the following elements:

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

(b) Assessment of required amendments to the current legislation;

(c) Legal requirements for the proposed market and organisational structure; and

(d) Other legal issues that may inhibit / prevent the development of the PPP Project.

9. **Stakeholder consultation findings and public interest evaluation**

This component 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.

10. **The Public Sector Comparator (PSC), 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 Contracting Authority.

11. **Conclusion and Recommendations on Feasibility Assessment**

This component should detail the key conclusions and recommendations on the Feasibility Assessment.
Part B: Structuring

1. Risk Assessment

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

2. Key Commercial Principles including Payment Mechanisms

This section should detail the key commercial principles for the PPP Project. These commercial principles would include among other principles, the payment mechanisms, relief, compensation and force majeure events, default events, termination payments, the Contracting Authority’s step-in, cure rights, insurance etc.

3. Evaluation Criteria for selection of the private entity

This section should detail the evaluation criteria for selection of the private entity.

4. 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.

5. Project resource requirement

This section should detail the resources required during and after the project development period.

6. Conclusion and Recommendations on Structuring

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

Appendixes (other supporting documents)

Any supporting documents should be included in the section like detailed projected financial statements, detailed environment impact assessment study, detailed technical report, detailed review of legal framework, etc.
A.5. DEALING WITH UNSOLICITED PROPOSAL UNDER BEST AND FINAL OFFER

1. Any person may identify a project to be implemented as PPP and submit to the concerned Contracting Authority a proposal with the following information to be considered as a valid unsolicited proposal.

   (a) Project details including project specifications and performance standards, scale and scope, and other technical, financial and commercial details;

   (b) Details of his technical, commercial, managerial and financial capability;

   (c) Full feasibility study of the project, clearly establishing that the project will be bankable and should have been prepared by an independent consultant;

   (d) Principles of the Concession Agreement, based on the applicable Model Concession Agreement; and

   (e) Estimated cost of the Feasibility Study of the PPP Project, which shall not exceed 1% (one percent) of the project value, and approval of any such amount and Feasibility Report will be subject to the approval of the PPPAC, for Type I PPP Projects, and the relevant Approving Authority, for Type II PPP Projects.

2. If the Contracting Authority finds merit in the unsolicited proposal, then the Contracting Authority shall inform such private entity, within 60 (sixty) days of receiving complete information as specified in para 1. Such private entity shall then be conferred the status of the original project proponent (“OPP”).

3. Prior to conferring the OPP status, the Contracting Authority shall ascertain:

   (a) The proposed project falls within the socio-economic and public priorities of the Government, as articulated by the Government in its policies, plans and guidelines,

   (b) The project meets the eligibility requirements prescribed by the DEA,

   (c) The project is on an eligible PPP format as defined by the DEA,

   (d) The project will deliver the infrastructure facility or service and in return receive payment, and

   (e) The OPP meets the qualification requirements in accordance with the Model RFQ document of the DOE. Or in case of any deviations, the same have been identified by the Contracting Authority for seeking exemption from the PPPAC.

4. The Contracting Authority shall then appoint a Transaction Advisor in accordance with Rule 15., to assist the Contracting Authority in analysing the value for money in the unsolicited proposal submitted by the OPP and thereafter, in the procurement process.

5. With the assistance of the Transaction Advisor, and within a period of 60 (sixty) days from the appointment of the Transaction Advisor, the Contracting Authority shall examine the information provided by the OPP, to ascertain:

   (a) Market assessment: to assess the need for and appropriate scope of the project. This would include a needs analysis, options analysis and demand forecast;
(b) **Technical feasibility** and technical parameters based on the market analysis, including specifications of required facilities and detailed project costing;

(c) **Preliminary social and environmental feasibility**, including the requirements for impact assessments and for the associated mitigations, if required;

(d) **PPP suitability analysis** involving an assessment of the suitability of the project to be undertaken as a PPP;

(e) **Project structuring** in terms of the recommended PPP mode or refinement of the PPP mode proposed by the OPP;

(f) **Financial analysis** incorporating a projected revenue structure, financial viability and affordability of the project for the contracting authority and the end users;

(g) **Risk assessment** of the project including review of the draft PPP/ concession agreement provided by the OPP, involving the identification of risk and allocation or risk to the party that is best able to manage each risk. The analysis may also include a quantification of the potential Contingent Liabilities that the Contracting Authority may have to experience over the project life-cycle;

(h) **Value for money analysis** if data related to public procurement project development time and cost is available. The guide and other aid for carrying out value for money shall be published by DEA separately;

(i) **Project implementation schedule**, including an outline of the proposed PPP procurement and award process through to technical and financial close, an outline of the construction schedule and target operation date; and

(j) **On completion of the project due diligence**, the Contracting Authority shall have established a comprehensive business and technical plan, the project structure including the scope of services of the concessionaire, risk sharing framework and work plan for project procurement, and allowable cost of Feasibility Study compensation to OPP in case it is not the winning Bidder and such amount shall not exceed 1% (one percent) of the Project Value.

6. Within a period of 30 (thirty) days from submission of the due diligence by the Transaction Advisor, the Contracting Authority shall obtain all the necessary internal approvals.

7. After obtaining the necessary internal approvals, the Contracting Authority shall submit for the approval of the PPPAC, for Type I PPP Projects and the relevant Approving Authority, for Type II PPP Projects, the following:
   
   (a) Its recommendations on the unsolicited proposal,

   (b) The project due diligence report of the Transaction Advisor, and

   (c) The proposed RFQ-cum-RFP, including the draft Concession Agreement.

8. Within a period of 60 (sixty) days, the PPPAC or the relevant Approving Authority, as the case may be, shall inform the Contracting Authority of its in-principle approval to proceed ahead with the tender process, or its rejection of the same, or its request for certain modifications and resubmissions related to the project.
9. After obtaining the in-principle Approval of the PPPAC or the relevant Approving Authority, as the case may be, the Contracting Authority shall proceed with the issue of a RFQ-cum-RFP. Apart from the applicable terms and conditions of the Model RFQ and Model RFP issued by the DOE, the RFQ-cum-RFP shall disclose the following information:

(a) Project details including project specifications and performance standards, scale and scope, and other technical and financial details as per the project due diligence report,

(b) Compensation payable to the OPP towards the costs of the Feasibility Study, as approved by the PPP Approving Committee, in the event it loses the tender process,

(c) Qualification requirements as per applicable provisions of the Model RFQ,

(d) Invitation to tender, Bid criteria and other applicable provisions of the Model RFP document,

(e) Draft Concession Agreement, and

(f) Any other relevant information.

10. Notwithstanding the provisions of para 9 above, the Contract Authority shall not disclose any proprietary information or commercial information held in confidence, including the commercial offer made by the OPP as part of its unsolicited proposal. Such information shall be duly specified by the OPP in its unsolicited proposal and shall be kept confidential by the Contracting Authority, except for the purpose of approval of the PPPAC or the relevant Approving Authority, as the case may be, and shall not be disclosed in the RFQ-cum-RFP.

11. The OPP may be asked to re-submit its complete proposal in response to the RFQ-cum-RFP, or may be asked to submit its commercial offer only in case all necessary documentation to establish qualification and responsiveness of the Bid is available with the Contracting Authority. In any case, the commercial bid cannot be less advantageous to the OPP’s unsolicited proposal that is underlying the in-principle Approval as per para 8.

12. To reflect the commitment of the OPP in the Tender Proceedings, the Contracting Authority shall require the OPP to submit a Bid Security equivalent to 5% (five percent) of the project cost, or such other amount as determined by the PPPAC or the relevant Approving Authority, as the case may be.

13. The RFQ-cum-RFP shall clearly mention the schedule of the Tender Proceedings, in terms of the dates on which the key milestones of the process would be undertaken. Any deviations from the minimum periods mentioned below shall be documented and shall be submitted for the prior approval of the PPPAC or the relevant Approving Authority, as the case may be, as part of the application of seeking in-principle Approval. The following minimum periods shall be followed by the Contracting Authority while determining the schedule of the Tender Proceedings:

(a) The Due Date shall be no later than 60 (sixty) days from the date of issue advertisement/notification of the RFQ-cum-RFP;

(b) The pre-Bid meeting shall be held not less than 30 (thirty) days before the Due Date;

(c) The clarifications on the queries of Bidders shall be issued not less than 21 (twenty one) days before the Due Date; and
Corrigenda or notification of amendments in the RFQ-cum-RFP or draft Concession Agreement shall be issued not less than 21 (twenty one) days before the Due Date.

14. The relevant provisions regarding the procurement process under Chapter V of the Rules as well as the provisions relating to the data room (Rule 84:) and site visits (Rule 85:), modification of the Bids and effectiveness of Bids (Rule 87:) shall be applicable.

15. Notwithstanding the above, if the OPP shall withdraw from the Bid process, then the RFQ-cum-RFP process shall stand terminated and the Contracting Authority may choose to retender the process via open competitive tender under a new process. If the OPP withdraws prior to the expiry of the period of effectiveness of Bids then the OPP shall forfeit its Bid guarantee submitted as per para 12.

16. The evaluation of the Bid, the Best and Final Approach (BAFO) would be used.

17. If the OPP’s proposal is not within a range of 10% (ten percent) from the Bid of one of the competing counter proposals that has been found to be the most advantageous to the Contracting Authority, then the PPP Project is awarded to the competing Bidder offering the most advantageous Bid.

18. If the OPP’s proposal is within a range of 10% (ten percent) from the Bid of one of the competing counter proposals which has been found to be the most advantageous to the Contracting Authority, then the Contract Authority will invite all Bidders whose Bids are within a range of 10% (ten percent) from the Bid which has been found to be the most advantageous. The Bidder which submitted the BAFO which is found to be the most advantageous out of all offers submitted and evaluated at this stage shall be declared as the Preferred Bidder.

Example:

Margin of Preference = 10%

OPP’s commercial offer = Premium offered to Authority is Rs. 95,00,00,000 (Rupees Ninety Five Crore)

Competing Bidder’s BAFO = Premium offered to Authority is Rs. 100,00,00,000 (Rupees One Hundred Crore)

Winning Bidder under the Bonus System = OPP, as its commercial offer is within the 10% margin range of the most advantageous competing Bidder.

Had the OPP quoted Rs. 89,00,00,000 (Rupees Eighty Nine Crore), then the competing Bidder would have been the Preferred Bidder.

19. If after evaluation of the BAFOs it is determined that the commercial offer of the OPP is exactly same as that of the Bid that has been found to be the most advantageous, then the OPP shall be declared as the Preferred Bidder at this stage.

20. If the PPP Project is not awarded to the OPP, the Contracting Authority shall compensate the OPP the costs of the Feasibility Study as approved by the PPP Approving Committee under para 9 and claim such costs from the winning competing Bidder. The Unsolicited Proposal, with the exception of any proprietary technology, will then become the property of the Contracting Authority, as the case may be.
21. In case the OPP is the only Bidder qualified under the RFQ-cum-RFP then the Contracting Authority may negotiate on the unsolicited proposal or the commercial offer, based on the value for money results of the project due diligence and the information relating to the in-principle approval of the PPPAC or the relevant Approving Authority, as the case may be.
A. 6. USE OF AUCTION AS A FORM OF PROCUREMENT OR DISPOSAL

1. Appropriateness of use of auctions as a procurement method:
   
   (a) Auctions may be considered an appropriate means for procurement in case of projects that seek to maximise the exploitation of a natural resource and revenue maximisation is a key objective for the Government;

   (b) Usually, PPP Projects that have the creation of a public facility or delivery of services to the public as its core function are not suitable for procurement through auctions. In the latter case, keeping the user charges affordable and/or minimising the viability gap financing while structuring a bankable PPP Project are vital;

   (c) Contracting Authorities may note that auctions may be inappropriate in public facilities or services to public, wherein the government may have an explicit obligation or an implicit moral obligation to the civic society for the continuous performance:

      (i) For instance, if a water distribution PPP Project to a city becomes bankrupt with excessive liabilities then the government will have an obligation to step in and resume the services. Even though the government may not take on the full liabilities of the private entity, but in an effort to resume services and yet keep the tariffs affordable to users, the government may require to assume certain liabilities that it had not originally envisaged. Hence, in circumstances where Bidders are not evolved enough and tend to Bid very aggressively, it might create substantial take back or step-in risks for the Government; and

      (ii) Similarly, a fine balance is required between making procurements fiercely competitive that force PPP Projects to lose their ability to withstand financial stress and having procurement processes that are somewhat more balanced. If one were to draw a range, then on one end would be auctions that make the expected profit margins very thin (and often non-existent as in the winner’s curse3) and on the other extreme end would be technical-cum-price based selections that select winning Bidders on a weighted average score with high technical scores (40%-70% (forty percent to seventy percent)) and much lower price scores of

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3 Since most auctions involve at least some amount of common value, and some degree of uncertainty about that common value, the winner's curse is an important phenomenon. In the 1950s, when the term winner's curse was first coined, there was no accurate method to estimate the potential value of an offshore oil field. So if, for example, an oil field had an actual intrinsic value of $10 million, oil companies might guess its value to be anywhere from $5 million to $20 million. The company who wrongly estimated at $20 million and placed a bid at that level would win the auction, and later find that it was not worth as much. Other auctions where the winner's curse is significant: (a) Spectrum auctions in which companies bid on licenses to use portions of the electromagnetic spectrum. Here, the uncertainty would come from, for example, estimating the value of the cell phone market in New York City. (b) IPOs, in which bidders need to estimate what the market value of a company's stock will be. (c) Pay per click advertising online, in which advertisers gain higher ranking if they bid higher amounts per click from a search engine user. (Source: Wikipedia)
(30% - 60% (thirty percent to sixty percent)). It would be fair to argue that the Indian system of competitive bidding that is based on quality-cum-cost-based selection comes in the left-of-the-middle and somewhat towards the auction system; and

(d) Therefore, auctions could be an appropriate choice, where revenue maximisation or profit maximisation through sale or complete exploitation rights to a natural resource or a sovereign resource is to be awarded to a private entity and, the failure of the private venture will not significantly impact the continued service delivery to citizens of public facilities or services. For instance, if at any given point in time there are multiple producers or services providers that are equally cost-effective existing then the Contracting Authority may not be overly concerned about the financial performance of any one player, as the Contracting Authority always has the option of procuring products or facilities or services of another supplier.

Procedure for use of Auctions

1. The Contracting Authority shall solicit bids by issuing an invitation to auction to be published in accordance with the PPP Rules. The invitation shall include:

   (a) The name and address of the Contracting Authority;

   (b) A detailed description of the subject matter of the procurement, in conformity with the PPP Rules, and the desired or required time and location for the provision of such subject matter;

   (c) The terms and conditions of the procurement, either in contractual form or a sale deed or license deed, as applicable, to be signed by the Contracting Authority;

   (d) The eligibility and qualification criteria, and procedures to be used for ascertaining the qualifications of bidders and any documentary evidence or other information that must be presented by bidders to demonstrate their qualifications in conformity with the PPP Rules;

   (e) The criteria and procedure for evaluating final offers, including any mathematical formula that will be used in the evaluation procedure during the auction;

   (f) The manner in which the final offer is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes;

   (g) The currency or currencies in which the final offer is to be formulated and expressed;

   (h) The minimum number of bidders required to register for the auction in order for the auction to be held, which shall be sufficient to ensure effective competition;
(i) If any limitation on the maximum number of bidders that can be registered for the auction is imposed in accordance with paragraph 3 of this article, the relevant maximum number and the criteria and procedure, in conformity with paragraph 3 of this article, that will be followed in selecting it;

(j) How the auction can be accessed, including appropriate information for connection to the auction;

(k) The deadline by which the suppliers or contractors shall register for the auction and the requirements for registration;

(l) The date and time of the opening of the auction and the requirements for identification of bidders at the opening of the auction;

(m) The criteria governing the closing of the auction;

(n) Other rules for the conduct of the auction, including the information that will be made available to the bidders in the course of the auction, the language in which it will be made available and the conditions under which the bidders will be able to bid;

(o) References to PPP Rules and other laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving classified information, and the place where these laws and regulations may be found;

(p) The means by which bidders may seek clarifications of information relating to the procurement proceedings;

(q) The name, functional title and address of one or more officers or employees of the Contracting Authority who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the procurement proceedings before and after the auction, without the intervention of an intermediary;

(r) Notice of the right provided under the PPP Rules to challenge or appeal decisions or actions taken by the Contracting Authority that are allegedly not in compliance with the provisions of the PPP Rules, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and reasons therefor;

(s) Any formalities that will be required after the auction for the procurement to enter into force, such as the signing of contract or deed;

(t) Any other requirements established by the Contracting Authority in conformity with the PPP Rules and other laws and regulations directly pertinent to the procurement proceedings.

2. The Contracting Authority shall qualify bidders based on the qualification criteria set out in the invitation to auction document.

(a) The Contracting Authority shall ascertain the qualifications of bidders based on their submissions and documentary evidence or other information that must
be presented by bidders to demonstrate their qualifications in conformity with the PPP Rules. The verification of submissions and documentary evidence of the bidders to ascertain their qualification should be preferably done prior to the auction; and

(b) Where such documentary verification of qualification of eligible Bidders has not occurred prior to the auction, then immediately after the closure of auction the Contracting Authority should undertake verification of documentary evidence of the winning Bidder to ascertain whether it qualifies or not. In case, the Contracting Authority determines the bidder to be unqualified then, the Contracting Authority shall select the next most advantageous bid, provided it is ascertained to be responsive and bidders is ascertained to be qualified.

3. In case of an electronic auction, the Contracting Authority may impose a maximum number of bidders that can be registered for the electronic auction only to the extent that capacity limitations in its communication system so require, and shall select the bidders to be so registered in a non-discriminatory manner. The Contracting Authority shall include a statement of the reasons and circumstances upon which it relied to justify the imposition of such a maximum in the record required under the PPP Rules.

4. Registration for the electronic auction and timing of holding of the auction, shall allow for the following:

(a) Confirmation of registration for the electronic auction shall be communicated promptly to each registered bidder;

(b) If the number of bidders registered for the electronic reverse auction is insufficient to ensure effective competition (a number below 4 (four) Bidders), the Contracting Authority may cancel the auction. The cancellation of the auction shall be communicated promptly to each registered Bidder; and

(c) The period of time between the issuance of the invitation to the electronic auction and the auction shall be sufficiently long to allow bidders to prepare for the auction, taking into account the reasonable needs of the Contracting Authority.

5. Requirements during the electronic auction, shall allow for the following:

(a) The electronic auction shall be based on single quantifiable criterion where the procurement contract is to be awarded to the most advantageous bid;

(b) During the auction:

(i) All bidders shall have an equal and continuous opportunity to present their bids;

(ii) There shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula provided to bidders, as applicable;

(iii) Each bidder must receive, instantaneously and on a continuous basis during the auction, sufficient information allowing it to determine the standing of its bid vis-à-vis other bids; and
(iv) There shall be no communication between the Contracting Authority and the bidders or among the bidders, other than as provided for in subparagraphs (a) and (c) of this paragraph;

(c) The procuring entity shall not disclose the identity of any bidder during the auction;

(d) The auction shall be closed in accordance with the criteria specified to bidders; and

(e) The Contracting Authority shall suspend or terminate the auction in the case of failures in its communication system that risk the proper conduct of the auction or for other reasons stipulated in the rules for the conduct of the auction. The Contracting Authority shall not disclose the identity of any bidder in the case of suspension or termination of the auction.
A. 7. PROCEDURES RELATED TO USE OF COMPETITIVE DIALOGUE

Competitive Dialogue

1. Competitive Dialogue is a procedure whereby a Contracting Authority is able to conduct dialogue with bidders qualified after a RFQ Stage with the aim of identifying the optimum solution to meet its requirements.

2. In conducting Competitive Dialogue, the Contracting Authority shall follow the procedure as provided herein.

RFQ

1. Selection criteria for creating a short list of bidders should be made on the basis of technical and/or financial capacity.

2. The evaluation of technical and/or financial capacity for the purpose of qualification shall be based on quantitative and objective criteria. The criteria must be stated in the RFQ.

3. All entities qualified thereunder shall be invited to participate in the dialogue stage.

Dialogue Stage

1. The Contracting Authority shall define the process to be followed in the dialogue stage and shall communicate the same to all qualified bidders. The communication should include, but shall not be limited to, the following:

   (a) Schedule of the process;
   (b) Number of stages; and
   (c) Submissions to be made by the participants.

2. The Contracting Authority shall invite the qualified bidders to submit outline solutions for the PPP Project.

3. Receipt of the bidder’s outline solutions will enable the Contracting Authority to evaluate the bidder’s solutions, and to initiate further dialogue with qualified bidders on their proposed solutions.

4. The dialogue may take place in one or more successive stages in order to reduce the number of solutions to be discussed.

5. The Contract Authority shall not reveal proprietary or commercially confidential information communicated by a bidder in the dialogue without its consent.

6. At the end of the dialogue stage the Contracting Authority shall identify the most optimum solution capable of meeting its needs.

RFP

1. The Contracting Authority shall define the project scope based on the identified solution.
2. The Contracting Authority shall follow the open competitive procedure that shall have combined RTP and Bids subject to provisions of Rule 78: and Chapter VIII:.

3. The Contracting Authority shall finalise the RFP based on the identified solution. For avoidance of doubt, the Contracting Authority shall define the evaluation criteria suitable to the identified solution.
A. 8. ROLE AND FUNCTION OF INDEPENDENT MONITOR

Comments for the Member of IMG: Probity Advising is a process undertaken by an independent third party to ensure that tendering, and contract award processes are fair and equitable to all bidding parties. This is a prevalent practice in Australia, New Zealand and Canada. It is also important to note that the role of Probity Auditor is different from the role Probity Advisor in Australia. A probity auditor’s role is more generally an ex post role, that audits the process by way of observing and reviewing after the process is completed. A Probity Adviser’s role is more generally an ex ante role, that is, pro-actively being involved prior to embarking on a strategies to overcome potential problems. The pro-active approach by the Probity Adviser should help to achieve best practice processes and outcomes.

The engagement of a Probity Advisor (in Australia) and the Fairness Advisor (in Canada), is to ensure that participants in a process are treated fairly, and officers and ministers involved in the process are kept at an arms length and protected from potential conflicts.

Background

1. The Independent Monitor shall be a third party observer and advisor to the Contracting Authority on undertaking processes that ensure that conduct of the proceedings is in accordance with these Rules.

2. The Independent Monitor shall be appointed by the Contracting Authority with the approval of Approving Authority. The Independent Monitor should be appointed prior to commencement of Bid process.

Scope of Work of the Independent Monitor

1. Participate as an observer in all external meetings, such as all interactions with Respondents anytime after the initiation of Tender Proceedings. This shall include any pre-submission meetings.

3. Participate as an observer in all internal meetings of the Contracting Authority and Tender Evaluation Committee related to the PPP Project.

4. Observe and record the conduct of the proceedings during the tendering and procurement and contract finalisation stages.

5. Review all tender documentation.

6. Provide advice to Contracting Authority and/or the Tender Evaluation Committee on matters of transparency and equity.

7. Provide observations and comments related to transparency, fairness and accountability of the Tender Proceedings that have been conducted, but not approve any decision or Tender Document.

8. Raise its concern on the transparency of the process to the Approving Authority, anytime during the process.

9. Report directly to the Approving Authority that is empowered to make the decision as to final approval.
10. Submit an independent report to the Approving Authority to verify that activities were conducted as per acceptable practices. Reports shall be submitted within two weeks on completion of following milestones:

(a) On completion of the REOI Stage, certifying whether or not the following conditions have been satisfied:

(i) The EOI does not contain any qualification conditions;

(ii) The EOI encourages all Respondents to participate;

(iii) The EOI does not require submission of any commercial in-confidence information related to the proposed PPP Project; and

(iv) All public officials and advisors involved in the process have conducted themselves with integrity and diligence to promote the interests of the Government (state or national government, as the case may be);

(b) On completion of the RFQ Stage, certifying whether or not the following conditions have been satisfied:

(i) Qualification criteria is appropriate to encourage competition:

   a) The qualification criteria is in accordance with the model RFQ criteria; or

   b) Where the qualification criteria is not based on the model RFQ criteria, then it has not unfairly or unreasonably reduced competition;

(ii) All procedures conducted by the Contracting Authority are in accordance with the RFQ; and

(iii) Document the milestones for procurement process and actual achievements along with reasons for any departure;

(c) On completion of the RFP Stage, certifying whether or not the following conditions have been satisfied:

(i) Evaluation criteria is appropriate to encourage competition:

   a) The evaluation criteria is in accordance with the approved RFP criteria; and

   b) Or, where the evaluation criteria is not based on the approved RFP criteria, then it is objectively quantifiable and yields most advantageous results for the contracting authority does not dilute the value for money in the Bid process;

(ii) All procedures conducted by the Contracting Authority are in accordance with the approved RFP; and
(iii) Document the milestones for procurement process and actual achievements along with reasons for any departure;

(e) On contract finalization, certifying whether or not the following conditions have been satisfied:

(i) No negotiations have taken place that impact the sanctity of the Tender Proceedings and the draft Concession Agreement, or violate any provisions related to PPP Rules or any decision of the Approving Authority;

(ii) The final Concession Agreement signed is in line with the draft Concession Agreement that was approved by the Approving Authority;

(iii) All procedures conducted by the Contracting Authority are in accordance with the RFP and the PPP Rules; and

(iv) Document the milestones for procurement process and actual achievements along with reasons for any departure.
A. 9. DECLARATION OF INTEREST

Every member of the Tender Evaluation Committee constituted by the Contracting Authority to act on its behalf for evaluation of Responses is required to sign the attached declaration of interest format once the Contracting Authority has announced and recorded the identities of Respondents.

Every member of the Tender Evaluation Committee shall be required to declare any interest, of which he/she is aware to the best of his/her knowledge, in any of the Respondents (including any member of the consortium constituting the Respondent).

An interest shall include, but will not be limited to:

1. Significant shareholding of self or immediate family in a Respondent or member thereof or of any joint venture, subsidiary or associates of such Respondent.
2. Immediate family member employed in a Respondent or member thereof or of any joint venture, subsidiary or associates of such Respondent.
3. Self or immediate family member contracted to provide goods or services to a Respondent or member thereof or of any joint venture, subsidiary or associates of such Respondent.
4. Self or immediate family member in receipt or in agreement to receive any gifts, favours, payments, sponsorships, subsidies, or any other benefits from any Respondent or any member thereof within the immediately preceding 12 (twelve) months of the date of this declaration.
5. Any other personal interest that may reasonably be deemed relevant to protect the integrity of the Tender Proceedings.

Definitions

1. Holding Company- A company having one or more subsidiaries.
2. Joint venture- a contractual arrangement whereby two or more parties undertake an economic activity which is subject to joint control.
3. Joint control- the contractually agreed sharing of power to govern the financial and operating policies of an economic activity so as to obtain benefits from it.
4. Key Management Personnel- those persons who have the authority and responsibility for planning, directing and controlling the activities of an enterprise.
5. Immediate Family - means the spouse, son, daughter, father and mother who may be expected to influence, or be influenced by, that individual.
6. Significant shareholding - means an equity holding of more than 1% (one percent) in the company.
7. Significant influence- participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies.
8. Subsidiary- a company:
(a) in which another company (the holding company) holds, either by itself and/or through one or more subsidiaries, more than one-half in nominal value of its equity share capital; or

(b) of which another company (the holding company) controls, either by itself and/or through one or more subsidiaries, the composition of its board of directors.

The details of any interest, as defined above, shall be filled in the following table and every member of the Tender Evaluation Committee shall sign the undertaking that follows:

<table>
<thead>
<tr>
<th>Name of Bidder/ Member of Bidding consortium</th>
<th>Nature of Interest as defined in clauses 1 to 5</th>
<th>Extent of Interest</th>
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I, [insert name of member], as a member for the Tender Evaluation Committee for the [insert name of Contracting Authority and Title and Registration Number of the PPP Project] declare that the above information is true and correct to the best of my knowledge. I declare further that in the event of any such interests arising during the course of Bid evaluation, these shall be promptly and accurately declared in writing to [Name of Contracting Authority].

Signed: [signature of member]                  Date: [insert date]
A. 10. CODE OF CONDUCT

1. All officers and employees of the Contracting Authority must comply with the letter and spirit of all requirements of the Public Private Partnerships (Preparation, Procurement and Management) Rules 2011.

2. All officers and employees involved in development, procurement and/or management of the PPP Project- [name of the PPP Project] must subscribe to this Code of Conduct, in addition to complying with para 1 above.

3. This code of conduct does not address every possible situation that may arise. It is not a substitute for the responsibility of the Contracting Authority to:

   (a) Exercise sound judgement;
   (b) Act with high standards of moral integrity; and
   (c) Abide by all applicable laws.

4. This code of conduct is intended to:

   (a) Confirm the person’s commitment to all its prescriptions;
   (b) Guide persons who are faced with ethical dilemmas in an increasingly complex operational environment;
   (c) Provide a referral for disciplinary and/or prosecuting procedures if a person is found guilty of fraud or corruption; and
   (d) Serve as a public commitment by the Contracting Authority to the highest standards of ethical and professional conduct in the evaluation of Bids.

5. A signatory of this Code of Conduct shall be in breach of the code if the signatory:

   (a) Contravenes or fails to comply with any provision in it; and
   (b) When declaring interests, willfully gives incorrect or misleading details

In these cases, a person will be liable for disciplinary action in terms of relevant public service regulations and may also be liable for criminal prosecution. The head of the Contracting Authority, acting on his or her own or on a complaint by any person, may investigate any alleged breach of this code by a person and may withdraw such person from participation in the project development, procurement and management proceedings during the investigation.

6. Definitions:

   (a) Relative: in relation to an individual, means the spouse, son, daughter, brother, sister, father and mother who may be expected to influence, or be influenced by, that individual;

   (b) Member: means a person appointed by the Contracting Authority to Project Management Team/ Tender Evaluation Committee in relation to the procurement proceeding for [name of PPP Project], either as the chairperson,
or as an ordinary member, for purposes of participating in the conduct of any part of the procurement proceedings on behalf of Contracting Authority;

(c) Privileged or confidential information: means any information:

(i) determined by the institution to be privileged or confidential;

(ii) discussed in closed session by the Bid evaluation panel;

(iii) which if disclosed would violate a person's right to privacy; and

(iv) declared to be privileged, confidential or secret in terms of any law.
DRAFT FORMAT OF THE CODE OF CONDUCT

I, [insert name of person], acting in my capacity as member of the Project Management Team or Tender Evaluation Committee for the [specify role of the person in the procurement proceedings] for [insert Tender details and number, if any] hereby undertake:

1. To act at all times with fidelity, honesty, integrity and in the best interests of the Government and the general public.

2. To diligently perform the duties of a member strictly in accordance with the PPP Rules, and according to all relevant instructions given by the Contracting Authority.

3. To properly prepare for and attend each meeting of the procurement proceedings, and failing this to withdraw as a member.

4. To recognize the public's right to access to information in the interests of administrative justice.

5. To take the utmost care in ensuring that there is reasonable protection of the records of the Contracting Authority and all documentation created and/or maintained under the PPP Rules.

6. Not to misuse the position or privileges of a member, or privileged or confidential information obtained as a member.

7. To carry out duties with the skill and care expected from a person of knowledge and experience, and to exercise due judgement.

8. Not to unfairly discriminate against any Respondent.

9. Not to abuse the position of member of Project Management Team/ Tender Evaluation Committee to promote or prejudice the interest of entity.

10. To give the Contracting Authority and Approving Authority [if required specify the same] all the information and explanations it requires to carry out their functions.

11. To report to the Contracting Authority any case of fraud, corruption, nepotism, maladministration and any other acts which constitute an offence or which are prejudicial to the public interest, arising during the Tender Proceedings.

12. To declare, diligently, accurately and honestly in the declaration of interest, all personal and/or business interests and to willingly abide by any decision of the Contracting Authority to withdraw as a member of Project Management Team/ Tender Evaluation Committee.

13. Not to make any false or misleading entries into the records of the Tender Proceedings.

14. To make no contractual commitments related to the PPP Project, to any Respondent, on behalf of the Contracting Authority.

15. To proactively protect privileged or confidential information of the Contracting Authority/ Contracting Authority from theft, unauthorised disclosure or inappropriate use, and specifically.
16. Not to respond to any queries relating to the Tender Proceedings on behalf of the Contracting Authority, unless expressly authorised in writing.

17. Not to disclose matter related to the Tender Proceedings, unless expressly authorised in writing by the Contracting Authority.

18. Not to request, solicit or accept any reward, gift or favour in return for deciding in a particular way on any matter, or for disclosing privileged or confidential information.

19. To disclose immediately to the Contracting Authority any attempted inducement or offers that may be construed as aimed at influencing or directing the evaluation of the Responses.

20. Not to vote at, attend or participate in any other way in any meeting or hearing in relation to any matter in the procurement proceedings, if any interest prevents the carrying out of member functions in a fair, unbiased and proper way in accordance with this code of conduct.

21. That, the breach of this code of conduct or any provisions of the PPP Rules shall not preclude the institution of criminal proceedings pursuant to applicable law against me.

Signed: ____________________     Date: _____________________

[signature of member]       [insert date]
A. 11. SCOPE OF WORK FOR INDEPENDENT ENGINEER

1. Scope
1.1 Indicative Terms of Reference for the Independent Engineer (the “Indicative TOR”) for development of the [●] PPP Project. The PPP Project is contemplated for [●].
1.2 TOR shall apply to construction, operation and maintenance of the PPP Project and Project Assets (Civil Structures, Plant and Machinery, any other as defined in Concession Agreement).

2. Role and functions of the Independent Engineer
2.1 The role and functions of the Independent Engineer shall include the following:
   (a) Review of the Drawings and Documents;
   (b) Review, inspection and monitoring of Construction Works;
   (c) Review, inspection and testing of Civil works, Plant and Machinery;
   (d) Conducting Tests on completion of construction and issuing Completion/Provisional Certificate;
   (e) Review, inspection and monitoring of O&M;
   (f) Review, inspection and monitoring of Divestment Requirements;
   (g) Determining, the costs of any works or services and/or their reasonableness;
   (h) Determining, the period or any extension thereof, for performing any duty or obligation; and
   (i) Assisting the Parties in resolution of disputes.
2.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

3. Termination
The Independent Engineer shall inspect the Project Assets in accordance with the Exit Strategy.

4. Reporting Requirement
The Independent Engineer shall prepare and submit to the CMT of Contracting Authority 3 (three) copies and Concessionaire 2 (two) copies each of the following reports:
   (b) Construction Phase: Monthly and Quarterly Inspection Report covering all aspects such as Progress Monitoring, Quality Assurance (QA)/Quality Control (QC) etc.
   (c) Operation and Maintenance Phase:
      (i) Monthly and Quarterly report on existing condition of facility including advise on all aspects of Operation And Maintenance, Toll Booths, Bridges or other Structures, Traffic Management & Safety, Telephone, Ambulance, etc.; and
      (ii) Monthly report on audit of the traffic using the PPP Project Highway at least once a month;
   (d) Various other reports as provided in the Concession Agreement such as Completion Report.
A. 12. CONTRACT MANAGEMENT PRINCIPLES

1. Functions of Contract Management Team before signing of contract

The CMT shall perform the following functions after the LOA has been issued to the Preferred Bidder:

(a) Finalize schedules and project specific information in the contract;

(b) Obtain performance bonds or guarantees from the private entity as per the terms of the RFP;

(c) Receive or make any payments to be made by either party as per RFP;

(d) For PPP Projects involving VGF, obtain final approval from Empowered Committee/Institution as per the “Guidelines for Financial Support to Public Private Partnerships in Infrastructure” issued by Department of Economic Affairs, Ministry of Finance vide OM No. I/4/2005- PPP dated January 23, 2006;

(e) For PPP Projects involving the India Infrastructure Project Development Fund, recover funds from successful Bidder in accordance with the “Scheme and Guidelines for India Infrastructure Project Development Fund” notified by the Ministry of Finance, Department of Economic Affairs, vide OM No. 7/2/2007-PPP dated December 5, 2007 and as amended from time to time.

(f) Obtain all documentation required from private entity and monitor fulfilment of all obligations of the private entity relating to approvals, consents and licenses to sign the Concession Agreement; and

(g) Procure all approvals required for the Contracting Authority for the signing of the Concession Agreement.

2. Fulfillment of Conditions Precedent

(a) The Contract Management Team shall be responsible for monitoring the fulfilment of Condition Precedents for Contracting Authority and the private entity in the Concession Agreement.

(b) The Contract Management Team shall submit a periodic report to the Contracting Authority on the progress of the fulfilment of individual Conditions Precedent. The periodicity of such reports would be defined by the Contracting Authority depending on the size and complexity of the PPP Project.

(c) The Contract Management Team shall notify the Contracting Authority of any potential failure or delay in the fulfilment of Conditions Precedent and shall recommend any actions for correction or avoidance, as the case maybe, of such potential failure or delay.

(d) The Contract Management Team shall periodically review the activities undertaken and progress made by the Concessionaire for the fulfilment of the Condition Precedents for Concessionaire in the Concession Agreement. The Contract Management Team shall report the result of such review in the report referred to in paragraph (2) of this article. The Contract Management Team shall also notify the Contracting Authority of any potential failure or delay on the part of the...
Concessionaire in fulfilment of Conditions Precedent, and recommend actions to be taken by the Concessionaire for correction or avoidance, as the case maybe, of such potential failure or delay.

3. **Responsibility during construction period**

(a) Once the construction starts the CMT shall be responsible for monitoring the progress of construction as per the schedule and contract terms. For this it will:

   (i) Monitor progress by the Contracting Authority of providing remaining land as per project schedule;

   (ii) Undertake periodic site-visits, to monitor the progress; and

   (iii) Review monthly and quarterly progress through IE inspection reports.

(b) Through the Independent Engineer, perform tests 30 (thirty) days prior to likely commissioning date to ensure quality, and provide for Completion Certificate.

(c) Monitor and review the continued fulfilment of mutual obligations and implement course corrections, if any.

(d) Invoke contractual terms in case of non-compliance by the private entity.

(e) Report monthly on project status to relevant Central Ministry/State Government.

(f) Approve the operations and maintenance manual submitted by the Concessionaire.

4. **Responsibility during operations period**

(a) Once the construction is completed the CMT shall, undertake periodic site-visits, to monitor the operations and maintenance of the PPP Project as per the contract terms. This shall include:

   (i) Monitoring service delivery quality, safety, user satisfaction, and emergencies;

   (ii) Monitoring the quality of maintenance (preventive, routine, periodic, major) as per standards and in accordance with O&M manual;

   (iii) Reviewing the progress and performance indicators;

   (iv) Monitoring the financial performance, including revenues, revenue sharing, and other parameters; and

   (v) Reviewing the continued fulfilment of mutual obligations and implement course corrections, if any.

(b) In case of non-compliance by the private party, the CMT shall invoke the contractual terms.

(c) Send monthly reporting on the status of the PPP Project to relevant Central Ministry/State Government.

5. **Performance Management**
(a) To achieve high standards of performance from the PPP Project, it is vital to continuously monitor its service delivery and compliance to performance standards. Therefore, the Contracting Authority, through the CMT, shall put in place requisite performance monitoring mechanisms.

(b) The CMT shall prepare, prior to signing of the Concession Agreement, a performance management plan as part of Contract Management Plan, such a plan shall, clearly define performance requirements for each stage in the project lifecycle, which shall include:

(i) Development requirements covering the standards of civil and engineering works;

(ii) Commissioning requirements covering testing requirements prior to commissioning of PPP Project;

(iii) Service delivery requirements covering output requirements for efficient service delivery;

(iv) Handover requirements which shall include the specific standards and requirements of assets at the time of handover and project exit; and

(v) Effectively link the payment mechanism to performance standards.

(c) Monitor the fulfilment of performance standards are satisfied and any default is appropriately dealt as per the contract terms.

(d) Monitor that all payments are made and penalties are imposed within the timeframes specified in contract.

(e) Ensure that performance is always assessed with respect to performance standards specified in contract.

(f) Document clearly performance monitoring procedures and ensure a common understanding of processes within contract management team.

(g) Prepare and circulate performance reports periodically to facilitate a shared understanding of delivery process, establish a system for collecting & documenting feedback on the PPP Project and ensure trends in substandard service delivery are identified & documented.

6. **Key Performance Indicators**

(a) Key Performance Indicators (KPI) for each of the performance requirements as defined in the contract, shall be periodically monitored by CMT. Such KPIs shall be:

(i) both qualitative and quantitative measures; and

(ii) a combination of the service quality, financial efficiency and process efficiency.

(b) The nature of specific indicators, frequency of their monitoring shall be in line with the nature and criticality of service delivery and the criticality of its impact on project lifecycle.
The Contracting Authority, through CMT, shall monitor performance through KPIs, wherein it shall, as part of performance management framework:

(i) Establish reporting and monitoring systems and procedures,
(ii) Define data collection methods & data sources,
(iii) Specify timeframes for reporting and monitoring of indicators, and
(iv) Assign responsibilities for reporting and monitoring activities.

The Contracting Authority, through CMT, particularly in long term Concession Agreements wherein performance standards for service delivery are likely to evolve over time, shall establish a system of continuous improvement in project service delivery. Herein, target indicators may be based on past performance with an incremental improvement envisaged so that principles of continuous improvement apply.

7. Risk Management

(a) Based on the risks identified and allocated during the procurement and contracting phases, a response plan to risks materialising shall be prepared by the Contracting Authority. This shall be a set of possible escalations and actions to be made by the Contracting Authority for managing risks and responding to possible risk outcomes.

(b) This shall include a risk reporting, monitoring and control system for continuous reporting, monitoring and updating of risks allocated to either party throughout the project lifecycle. And also to establish procedures to be used by the Contracting Authority to deal with failure of the private party to manage the risk, such as penalties and other suitable measures, as also contingency procedures to restore service delivery.

8. Contingency Management

(a) Many of the facilities and services under the PPP Projects will be of an essential nature and hence would require to be restored to citizens or users at the earliest possible and even in face of private party failure.

(b) Contingency planning is vital to a PPP Project, as it may not be possible to fully transfer responsibility for the risk of service delivery failure to the private party. Need for a contingency plan arises on account of possible service disruption or private party default. Wherein, contingency can be classified into:

(i) Disruption in service delivery not on account of private party default such as, force majeure events;
(ii) Disruption in service delivery on account of private party default on contract terms; and
(iii) Default by private party but no disruption in service delivery.

(c) In light of this Contracting Authority shall cause development of a Contingency Management Plan. It shall include the following:
(i) Business continuity plan, Its objective is to mitigate the impact of service delivery disruption on the key stakeholders, i.e. contracting parties and end users. It shall include:

a) Potential events that could disrupt service delivery;
b) Immediate actions in response to such events;
c) Priority and timeframes for restoring critical services;
d) Service levels for each critical service;
e) Identified resources for implementing the plan;
f) Allocation of roles and responsibilities for response management;
g) Information required to implement the plan;
h) Stakeholder communication; and
i) Periodic testing requirement, of the plan.

(ii) Step-in plan, allows the Contracting Authority, under exigent circumstances, to “step-in” and temporarily take control of project facilities to ensure continued service delivery, it shall include:

a) Potential events that may trigger step in clause of contract;
b) Contractual conditions to be satisfied before step in;
c) Institutional roles & responsibilities in implementation of step in clause;
d) Prior authorizations required prior to exercise of right;
e) Obligations & liabilities incurred in exercising step in rights;
f) Resources required to implement the plan;
g) Communication to implement the step in plan; and
h) Whether “step-out” is possible or feasible.

(iii) Default plan, to be implemented when default clause of the contract is invoked, it shall include:

a) Potential events likely to lead to a default;
b) Impact of default on service delivery;
c) Time period before institution can act on the default;
d) Contractual remedies and impact on service delivery;
e) Institutional roles and responsibilities;
f) Resources required to implement the plan; and
9. Managing relationship and communication

(a) It is essential that there exists mutual trust amidst contracting parties, through open communication and information sharing. On each side, the roles and responsibilities of respective contract management teams should be finalized, channels for communication should be clearly set out and communication should be consistent across levels and underpinned by a culture of information sharing and prompt action.

(b) It is important to periodically review the relationship between contracting parties. The objective of such an exercise should be to identify any issues that may have arisen during the course of project execution and the resolution of which has had an impact on the relationship between contracting parties. Initiating steps to overcome any issues early on will help avoid any escalation of such issues into larger disputes.

(c) It is also important to conduct periodic one-to-one and group interactions between the contract management teams of the contracting parties.

10. Dispute Resolution

(a) Effective measure should be put in place through the contract to settle disputes between the contracting parties.

(b) Mutual discussions, wherein the parties to the agreement can come together to discuss a mutually agreeable settlement, is one of the most effective tools for dispute resolution in terms of management time, cost, range of possible solution and relationship management. Thus it shall be the preferred method to resolve disputes through mutual discussions at the level of the Contract Director and the chief executive officer of the private party.

(c) Thereafter, Contracting Authority shall follow the procedures specified in the Concession Agreement to resolve disputes between parties.

(d) It shall be the responsibility of contract management team to ensure that the dispute resolution procedure laid down in contract is adhered to and informing contracting parties and all relevant stakeholders on dispute resolution progress.

11. Contract Administration

The Contract Management Team shall be responsible for contract administration, supported by such resources as are required. It shall encompass the fulfilment of the set of activities mentioned herein to meet contractual requirements.

12. Financial administration
(a) Financial administration shall include implementation of the payment mechanism as defined in the contract and developed in the contract management plan. The Contract management team shall be responsible for fulfilling the activities related to financial administration listed herein.

(b) In case of availability based PPP Projects (Annuity), ensure timely payments by the authority as set out in the contract.

(c) In case of user fee based PPP Projects:
   (i) Effective monitoring of revenues earned by the private operator and collection of revenue share or any other payments due to authority; and
   (ii) Ensure timely disbursals of capital or revenue grants (if any) by the authority.

(d) In both types of PPP Projects, as applicable, the process would also involve:
   (i) Imposition of penalties (including suspension of revenue collection rights);
   (ii) Adjustments for inflation and other factors; and
   (iii) Develop and implement reporting systems for the above.

(e) The CMT shall ensure that, payment mechanism links payments to achievement of performance standards set out in the contract, such that payment mechanism shall:
   (i) Fully reflect actual service delivery;
   (ii) Incorporate a system of penalties such as deductions based on severity of service failure; and
   (iii) award penalty points for non-compliance, leading to contractual remedies taking affect in the event of repeated offence.

13. **Information and knowledge management**

(a) The contract management team shall be responsible for put in place effective mechanisms for information and knowledge management. It shall extend to, but not limited to responsibilities listed herein below:
   (i) Identification of information resources;
   (ii) Capturing, collating, classifying, storing and appropriate security of information;
   (iii) Sharing of information to users, likely users and to those required under any law; and
   (iv) Reviewing, maintaining and purging of information to meet contractual compliance requirement.

(b) To ensure continuous availability of project related knowledge and information through the project lifecycle, efficient information management would require, among others:
(i) Maintaining a document/information management system; and

(ii) Establishing necessary tools & processes such as policies & procedures for managing information, records & documents;

(c) Fostering an appropriate culture for adhering to specified policies & procedures and information/knowledge exchange at appropriate levels.