PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Sub: New Infrastructure Policy – 2007

Read: G.O.No.IDD UIP 1997 dated 26.12.1997.

Preamble:

The Government of Karnataka had come out with the Infrastructure Policy in 1997. The Infrastructure Policy of 1997 aimed at expanding and upgrading infrastructure to make the growing needs of industrial and agricultural sectors, inviting private investment and adopting an integrated approach to infrastructure development. This policy had specific incentives and concessions for infrastructure projects. However, with the efflux of time there have been changes in the tax and stamp duty regime, formulation of Govt. of India's Policy on Public-Private-Partnership (PPP) in infrastructure projects and the concept of Viability Gap Fund (VGF). In line with these changes, the existing policy needs to be revised.

2. The main objective of Government of Karnataka is to provide a fair and transparent policy framework to help facilitate the process of economic growth and encourage Public-Private Partnership (PPP) in upgrading, expanding and developing infrastructure in the State. The State Government, therefore, proposes to provide and facilitate an increasing role for PPP - both in creating new infrastructure assets as well as in managing assets already created. By this, the Government seeks to derive the following benefits, which would deliver better value-for-money to the user:

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i. Savings in costs due to innovative designs, timely project implementation and higher efficiencies in operations
ii. Enhanced quality of services to users due to better managerial practices & efficiencies
iii. Reduction in, and gradual elimination of, pricing constraints
iv. Enabling public funds to be earmarked for other commercially non-viable but socially justifiable projects
v. Financial innovation and development of cost-effective solutions
vi. Greater employment opportunities in the infrastructure sector.

3. Keeping the above objectives in view, a draft new Infrastructure Policy has been developed around the following main principles:

- Efficient use of existing assets and optimal allocation of additional resources
- Payment for services
- Equitable contractual structures
- Transparent process of procurement
- Fair regulatory framework
- Enabling institutional frameworks
- Sustainable incentives and concessions

4 The draft of the new Infrastructure Policy was discussed with various Government Departments / Agencies and Industry Associations Based on the suggestions and recommendations that emerged, a new Infrastructure Policy has been evolved. Hence the following order.

GOVERNMENT ORDER NO.IDD 32 IDM 2003,

BANGALORE DATED 16.07.2007

In the circumstances explained in the preamble, the Government of Karnataka is pleased to announce the new Infrastructure Policy – 2007 as detailed in annexure- to this order and supported by schedule-I, schedule-II and schedule-III which inter-alia contain details about Evaluation of Risks & Risk Mitigation Measures, Institutional Roles & Responsibilities and Incentives & Concessions respectively.

2. The new Infrastructure Policy shall cover the following sectors:

i. Agri-Infrastructure
ii. Education
iii. Energy
iv. Healthcare
v. Industrial Infrastructure
vi. Irrigation
vii. Public Markets
viii. Tourism
ix. Transportation & Logistics
x. Urban and Municipal Infrastructure.

3. The new policy will be anchored through the PPP Cell, constituted under G.O. IDD 5 UIP 2006(P) dated 18-6-2007 in the Infrastructure Development Department. The Cell shall co-ordinate and facilitate the identification, development, and implementation of infrastructure projects, including facilitation for obtaining clearances and approvals on a PPP route. The Single Window Agency for PPP constituted under the chairmanship of the Chief Secretary, with ACS and other Principal Secretaries/Secretaries as members will facilitate, coordinate and promote infrastructure projects on PPP basis, in addition to approving the PPP projects up to Rs.50.00 crore. The High Level Committee constituted under the Chairmanship of the Chief Minister under section 3 of the Karnataka Industries (Facilitation) Act 2002 will approve the PPP projects exceeding Rs.50.00 crore investment.

4. With a view to promoting innovative projects and expediting implementation of infrastructure projects, sanction is also accorded for awarding the contract on 'Swiss Challenge' method, including consultancy services. The concerned department shall take necessary action to obtain exemption under section 4(g) of the Karnataka Transparency in Public Procurements Act, 1999 in respect of projects which are urgent in nature and which are taken up under 'Swiss Challenge' method, till this Act is amended to make a provision for 'Swiss Challenge' method in the procurement of PPP projects.

5. The new Infrastructure Policy - 2007 shall come into effect from the date of issue of this Government Order and will be in force until the formulation of another new Policy.

6. This order issues with the concurrence of Finance Department vide U.O.Note No.FD 629 Exp.I/2007 dated 23.06.2007.

By order and in the name of the
Governor of Karnataka

16.7.07

(N. MANJULA GEETHA)
Under Secretary to Government,
Infrastructure Development Department.

To:
The Compiler, Karnataka Gazette for publication in the next issue of the gazette and to supply 1000 copies to the Infrastructure Development Department.

Copy to:

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2. All the Principal Secretaries / Secretaries to Government.

3. All the Heads of the Departments.
4. The Deputy Commissioners of all Districts.
5. ALL Chief Executive Officers of Zilla Panchayats.
6. The Managing Director, KSIIDC, Khanija Bhavan, Race Course Road, Bangalore – 560 001.
7. The Managing Director, iDeck, No.39, 5th Cross 8th Main, RMV Extn., Sadashivanagar, Bangalore-560 080.
8. The Under Secretary (Exp.I), Finance Department, Vidhana Soudha, Bangalore.
9. The Senior Director, PF & R Divn., Planning Department, MS Building II Stage, Bangalore.
10. The Joint Director of Treasuries, SHT, NT Road, Bangalore-2.
11. The Director, Infrastructure Development Department.
12. Section Guard File / Spare Copies.

Copy for information to Personal Secretaries to:

1. The Principal Secretary to Hon'ble Chief Minister.
2. All Ministers of Government of Karnataka.
3. The Chief Secretary to Government.
4. The Additional Chief Secretary to Government.
5. The Additional Chief Secretary & Development Commissioner.
6. PS to Principal Secretary, IDD/PA to Joint Secretary, IDD/Director, IDD/Under Secretary, IDD

Annexure- I

Infrastructure Policy – 2007 for the State Of Karnataka

Infrastructure Development Department
Government of Karnataka

July 2007

VISION

The Government of Karnataka envisions building strong Public-Private Partnerships in infrastructure, to achieve the twin objectives of high growth and equity;

By expanding, deepening, and developing private investment in infrastructure as the means to achieve that high growth; and

And establishing Karnataka as a role-model for infrastructure development, where governance is based on international best practices

Contents

Abbreviations

	Build-Own-Lease-Transfer
	Build-Own-Operate
BOOST	Build-Own-Operate-Share-Transfer
	Build-Own-Operate-Transfer
	Build-Operate-Share-Transfer
	Build-Operate-Transfer
CA	Concession Agreement
FD	Finance Department, Government of Karnataka
	Government of India
	Government of Karnataka
HLC	High-Level Committee
	Inter-Departmental Committee
	Infrastructure Development Department, Government of Karnataka
	Infrastructure Development Corporation (Karnataka) Ltd.
IIF	Infrastructure Initiative Fund
	High-level Committee
K-RIDE	Rail Infrastructure Development Co. Karnataka Ltd.
KUIDFC	Karnataka Urban Infrastructure Development Finance Corporation Ltd.
MSW	Municipal Solid Waste
	Non-Governmental Organizations
NSDP	Net State Domestic Product
JNNURM	Jawaharlal Nehru National Urban Renewal Mission

	Operation & maintenance
	Project Development Fund
PIF	Project Investment Fund
PPP	Public-Private Partnerships
PSP	Private Sector Participant
	Rehabilitate-Operate-Maintain-Transfer
	Special Purpose Vehicle
	State-level Single Window Agency
	Viability Gap Fund

Definitions

Bidder	Any entity which has submitted a proposal to undertake an Infrastructure Project under Public-Private Partnership
Central Government	Government of India
Central Government Agency	Any department of the Central Government, any statutory authority of the Central Government, or body corporate, owned or controlled by the Central Government holding greater than 50% of the paid-up share capital in such entity.
Company	Any entity incorporated under the Companies Act 1956 (Act I of 1956)
Developer	Any Private Sector Participant who has entered into a contract for an Infrastructure Project with the Government/ Government Agency
District PPP Committee	A committee constituted by GoK at the District level to facilitate and co-ordinate infrastructure projects under the PPP route.
Government	Government of Karnataka
Government Agency	Any department of the Government, any statutory authority, urban local body, or body corporate, owned or controlled by the Government holding greater than 50% of the paid-up share capital in such entity.
High Level Committee	Committee constituted by GoK under the chairmanship of Chief Minister under Section 3 of the Karnataka Industries (Facilitation) Act 2002.
Infrastructure	Any public work relating to facilities for utilization of natural resources or provision of services, by way of physical structures or systems
Infrastructure Project	A project in Infrastructure, in the sectors delineated in this Policy
PPP Cell	Special cell constituted by GoK at the State level to facilitate and coordinate infrastructure projects under the PPP route.
Person	Any company or association or body of individuals, whether incorporated or not, that is a legal entity

Single Window Agency for PPP	Agency constituted by GoK at the State level for approval of projects up to Rs.50 cr and for recommending projects beyond Rs.50 cr to the High Level Committee.
Private Sector Participant	Means any Person other than: ➢ Central Government or Central Government Agency ➢ Government or Government Agency ➢ Any joint ventures between Central Government, Central Government Agencies, Government, and/or Government Agency, where there is no shareholding from private/ retail investors
Public Need	Means a substantial or obvious community need for the proposed project based on all attendant circumstances as compared to a mere convenience. The determination of "Public Need" shall be taken by the relevant administrative department after considering (a) Common use and needs of the community; (b) Appropriateness of the project in relation to the development plans of the department; and (c) Possibility of the project otherwise not coming up.
Public Private Partnership	Construction/ Renovation/ Rehabilitation and Operation & Maintenance, or Operation & Maintenance of an Infrastructure Project of the Central Government or Government Agency for common use where a Private Sector Participant: ➢ has an investment; and ➢ Is responsible for such construction/ renovation/ rehabilitation and operation & maintenance, or operation & maintenance for a period of not less than 3 years, in each case.

1 Preamble

Karnataka has been a forerunner of India's economic growth. Between 1996-97 and 2005-06, the Gross State Domestic Product (GSDP) at constant prices grew at a compound rate of over 7% per annum, 16% higher than the national average of over 6.0%. Had many of the infrastructure constraints not existed, the growth rates could have been higher.

2. Clearly recognizing the need to develop high quality infrastructure as a means to achieve rapid economic growth, the Government of Karnataka (GoK) had come out with an Infrastructure Policy in 1997. The Infrastructure Policy of 1997 was aimed at expanding and upgrading infrastructure to meet the growing needs of the industrial and agricultural sectors, inviting private investment in infrastructure, and adopting a co-ordinated and integrated approach to infrastructure development. The policy also had specific incentives and concessions for infrastructure projects. However, with the efflux of time, there have been changes in the tax and stamp duty regime, formulation of Government of India's (GoI) policy of Public-Private-Partnership (PPP) in infrastructure projects, and the concept of the Viability Gap Fund (VGF). In line with these changes, GoK has now resolved to formulate this new Infrastructure Policy.

3. GoK has also set out several sectoral policies in the areas of Power (1997, 2001), Ports (1997), Tourism (1997), Information Technology (1997), and Roads (1998). GoK has also revised the Industrial Policy in 2006, to take into account the developments and requirements in the industrial development scenario. These policies have been evolved with a view to augment and expedite infrastructure development through active private sector participation. Despite these initiatives, there has not been any significant increase in private investments, while public investment in project development has been increasing steadily during the same period. Many of the infrastructure constraints have remained, or even become more severe.

4. GoK has sought to deal with some of these constraints by implementing various programmes and projects departmentally and through GoK agencies. These are

being financed through various sources including budgetary resources, grants and loans from GoI, and bilateral and multi-lateral agencies.

5. GoK aims to achieve a high average growth rate in the coming years, across all sectors, including infrastructure. These targets are expected to be achieved by facilitating private sector investment and rapidly upgrading technology. GoK recognises that high levels of economic and industrial growth can be achieved only if infrastructure develops at a commensurate pace. GoK also recognizes that the private sector can play a substantial role in infrastructure development, and that given the right policies and frameworks, adequate private investment can become available. GoK has already taken several initiatives in this regard, envisaging significant investments in projects in transportation (for airports, ports, railways and roads), tourism, power generation, urban infrastructure, etc.

II Objectives & Benefits of this Policy

6. The main objective of GoK is to provide a fair and transparent policy framework to help facilitate this process and encourage Public-Private Partnerships (PPP) in the upgrading, expanding and development of infrastructure in the State.

7 GoK, therefore, proposes to provide and facilitate an increasing role for PPP - both in creating new infrastructure assets, as well as in managing assets already created. By this, GoK seeks to derive the following benefits, which would deliver better value-for-money to the user:

i. Savings in costs due to innovative designs, timely project implementation and higher efficiencies in operations
ii. Enhanced quality of services to users due to better managerial practices & efficiencies
iii. Reduction in, and gradual elimination of, pricing constraints
iv. Enabling public funds to be earmarked for other commercially non-viable but socially justifiable projects
v. Financial innovation and development of cost-effective solutions
vi. Greater employment opportunities in the infrastructure sector

8. PPP would be considered both in new Infrastructure Projects and in managing existing Infrastructure Projects. The specific option to be followed would be based on specific requirements, for which GoK may seek recommendations from experts/ professional agencies. Where necessary, GoK may also set up independent advisory group(s) to assist in the formulation of sector strategies and selection of suitable implementation options.

9. **As far as possible, for all new investments in infrastructure, the option of implementing the project through PPPs would be considered first. GoK would directly invest in a project only after satisfying itself that the same cannot be implemented through a PPP. Exceptions would be projects in backward areas, or projects with high social relevance, but which are *prima-facie* not financially viable.** The following models would be considered, *inter-alia*, for PPPs:
   - Project implementation by GoK/GoK Agency followed by a medium or long-tenure O&M contract to a private operator
   - Project implementation by a Special Purpose Vehicle (SPV) set up by GoK/GoK Agency followed by divestiture to a private operator after stabilization of operations.
   - Project Implementation by a private developer/operator or joint ventures with GoK under a licence/concession structure.

10. GoK recognizes that for some projects it may be necessary for Government of India or GoK to extend financial support by way of equity participation, Viability Gap Fund[1], or other mechanisms in order to leverage the desired levels of private finance. It is envisaged that the incentives/ financial support contemplated under this Policy are applicable:
   - **For infrastructure projects where, in the opinion of the Government, the project is a public project set up for common use, where such infrastructure would otherwise not be created; and**
   - **Only for bridging the viability gap for Infrastructure Projects on a PPP basis.**

   Given the experiences with the reform process in the last decade, it is felt that a consistent approach needs to be followed in all infrastructure sectors, so that the

[1] As per Guidelines on Support to Public Private Partnerships in Infrastructure issued by the Ministry of Finance, Department of Economic Affairs, Government of India

process of development is both uniform and complementary. This Infrastructure Policy seeks to formulate the touchstone principles that would constitute the broad framework for the development of each infrastructure sector.

12. In order to achieve this consistency, GoK would develop medium and long term strategies and implementation plans for each of the infrastructure sectors clearly setting out the role for PPP, which would allow for the provision of adequate and reliable infrastructure services of high quality at affordable prices to users.

III Applicable Sectors

13. The infrastructure sectors and facilities, which would be governed by this Policy, include the following:

Agri-infrastructure	➢ Agriculture and horticulture markets ➢ Floriculture parks and markets ➢ Agro-food processing and allied infrastructure (including common-user cold storage facilities)
Education	➢ Infrastructure and facilities for educational institutions, not on a purely commercial basis, and which satisfies a Public Need
Energy	➢ Power generation, including captive power generation, as per the provisions of the Electricity Act 2003, and co-generation projects, transmission, distribution and power trading services Oil and Gas (origination, terminals, transmission, and gas works) ➢ Renewable and non-conventional energy sources (Wind, Hydro, Solar, tidal, biomass, and MSW)
Healthcare	➢ Infrastructure and facilities for healthcare, not on a purely commercial basis, and which satisfies a Public Need

Industrial Infrastructure	➢	Industrial Parks (including Biotechnology, Information Technology parks) Special Economic/ Free Trade and Export Promotion Zones Industrial Estates and Industrial Townships
Irrigation	➢	Canals, dams and weirs
Public Markets	➢	Infrastructure and facilities for public markets, not on a purely commercial basis, and which satisfies a Public Need
Tourism	➢ ➢ ➢ ➢	Amusement , Entertainment, Theme park Hotels/ Resorts Convention & Exhibition Centres Trade fairs Cultural centres
Transportation & Logistics	➢	Roads (including bridges, interchanges, and flyovers) ➢ Railway systems Urban transport systems: MRTS, LRTS, Monorail, High-capacity bus systems ➢ Airports and airstrips Minor ports and harbours ➢ Inland water transport Bus/ Truck/ Urban Transport Terminals and associated public facilities such as Public Amenities Centres ➢ Warehousing infrastructure (including container freight stations, container depots, cold storage facilities and tank farms) ➢ Mechanised and Multi-storey Parking facilities
Urban and Municipal Infrastructure	➢	Township development ➢ Commercial development with common-user facilities ➢ Water Supply & Sewerage Desalination ➢ Wastewater recycling and reuse ➢ Underground drainage Solid waste/ Bio-medical waste/ Hazardous waste: Collection, transportation, treatment and disposal facilities

In all cases, it is envisaged that the incentives/ financial support contemplated under this Policy are applicable only if the conditions under Para 10 are met.

The sectors/ areas in the ambit of the Policy would be modified as and when appropriate.

IV Touchstone Principles

14. The Infrastructure Policy has been developed around the following main principles:
    - Efficient use of existing assets and optimal allocation of additional resources
    - Payment for services
    - Equitable contractual structures
    - Transparent process of procurement
    - Fair regulatory framework
    - Enabling institutional frameworks
    - Sustainable incentives and concessions

A. Efficient Use of Assets and Allocation of Resources

15. GoK recognises that efficiency in allocation of resources can be achieved by prioritisation of projects in an objective and unbiased manner. To this end, GoK would first look at the option of better utilization of existing assets before new investments are proposed. Priority would be accorded to those projects where development of critical linkages provide significant network or linkage benefits, as in the case of a transportation link interfacing railways, roads and ports, or a power project in the vicinity of a consumption centre.

16. GoK would develop projects based on considerations of both social need and economic viability, the focus being integrated infrastructure development. GoK, however, recognises that "social" projects may not offer sufficient commercial incentive for PPP. In such cases, Government would use other compensation mechanisms like provision of VGF, or annuity payments. As an alternative, GoK (or

Government Agency) may implement such projects upfront and eventually transfer management of services to a Private Sector Participant (PSP), where feasible.

GoK would also develop objective criteria for rationalization of investments for expanding, upgrading and/or development of Infrastructure. Typically, project identification and prioritisation would be governed by the following considerations:

- Magnitude of gap between demand and supply for the Infrastructure;
- Focus on balanced regional development[2], especially with regard to provision of basic Infrastructure;
- Development of physical/ inter-sectoral linkages where significant economic gains can be realized.

18. Since GoK would actively promote PPP in Infrastructure Projects, a larger share of investable public funds could be used for identified social needs that may not otherwise be amenable to private finance initiatives. In order to create a sustainable source of government funds for long-term infrastructure financing, GoK would leverage internal and extra-budgetary resources under various schemes such as the Infrastructure Initiative Fund (IIF), ASIDE (Assistance to States for Infrastructure Development for Exports), National Urban Renewal Mission (NURM), Viability Gap Fund (VGF), and resources from iDeCK (PDF & PIF), KUIDFC, and bilateral and multilateral agencies

B. Payment for Services

19. GoK recognizes that in a system where pricing of services is not economically sustainable, users would have no incentive to economize on their use of resources, and service providers would have no incentive to become more efficient. GoK believes that the inculcation of the "provider-charges" and the "user-pays" principles is fundamental to the success of PPPs. To this end, GoK would, where necessary and appropriate, consider levy of user charges (tolls, fees, tariffs, cesses etc.) to meet the following objectives:

- Create a stable and dedicated financial source for construction/ redevelopment/ rehabilitation/ replacement of project assets and their

In line with the report of the Dr Nanjundappa Committee on addressing regional imbalances ongoing operations and maintenance in order to provide efficient, sustainable and high quality services at affordable prices to users.

Manage demand

- Encourage PPP

Cover costs of service provision

Recognising that economically weaker sections may require certain subsidies in user charges, provide explicitly for such subsidies to the project, to ensure that the project remains economically viable.

20. The levy of user charges would be based on one or more of the following criteria:
    - Savings to users
    - Willingness to Pay
    - Need for explicit subsidies
    - Uniformity between various projects
    - Cost Recovery
    - Debt service & Equity returns

C. Contractual Structures

21 GoK would set in place appropriate contractual arrangements to give effect to the process of project implementation. GoK's endeavour would be to develop contractual frameworks that would allow for equitable allocation of risks between the contracting parties, taking into account the legitimate concerns of private investors. The attempt would be to allocate risks to the party best suited to bear the risks. A matrix of typical project risks and risk mitigation measures is set out in Schedule I.

22. **Existing Assets**: The contractual/ implementation structures used would include the following:
    - Management of the whole or part of the assets by private operators through
        - Operations and Maintenance (O&M) contracts for pre-determined periods
        - Lease of assets
        - Rehabilitate, Operate, Maintain and Transfer (ROMT) contracts

Sale of whole or part of the assets

Partial or full divestiture of the Undertaking

23. **New Assets**: Depending on the nature of the project, the contractual structures/ agreements used for new projects would include, *inter-alia*:
    - Build & Transfer (BT)
    - Build-Lease-Transfer (BLT)
    - Build-Transfer-Operate (BTO)
    - Build-Operate-Transfer (BOT)
    - Build-Own-Operate-Transfer (BOOT)
    - Build-Own-Operate (BOO)
    - Build-Operate-Share-Transfer (BOST)
    - Build-Own-Operate-Share-Transfer (BOOST)
    - Build-Own-Lease-Transfer (BOLT)

24. **Special Purpose Vehicles**: Where appropriate, GoK/ GoK Agencies may participate in the equity structure of any SPV for the development and implementation of infrastructure projects. The selection of the PSP for participating in the SPV would follow the procurement process set out in section 27. The equity structure of the SPV would be decided on a case-to-case basis.

25. The Infrastructure Development Corporation (Karnataka) Limited (iDeCK) has been assisting GoK in the preparation of documents for Infrastructure Projects, incorporating the touchstone principles set out in this document. iDeCK would co-ordinate with the Infrastructure Development Department (IDD) in providing assistance to concerned departments in the preparation of sectoral strategies and action plans for the successful implementation of projects under the ambit of PPPs. iDeCK would also assist these departments in the project development and procurement process, where such assistance is requested. Alternatively, these services could be procured from independent third party consultants as may be suitably identified and selected by the concerned project development agencies/ departments for this purpose.

26. GoK recognizes that creation of Infrastructure under the PPP model requires that there be reasonable assurance that competing facilities would not be created that would materially adversely affect the technical and financial viability of the project.

D. Procurement Process

27. All contracts would be awarded on the basis of a transparent process, under the ambit of the Karnataka Transparency in Public Procurement Act (Act 29 of 2000), or under a "Swiss Challenge" format as set out in Clause 29. In all cases, the award criteria would be spelt out upfront. The stages in the procurement process could be single-stage or multi-stage, depending on the size or level of complexity of the project. For this purpose, GoK may use the services of suitably qualified independent advisers with the requisite technical knowledge. Generally, the stages in the procurement process would include:

- Expressions of interest (EOI)/ Request for Qualifications (RFQ)
- Request for Proposals (RFP)
  - Technical and financial proposals
- Signing of Agreements

28. The criteria used for selection would include objective technical/ financial parameters, such as:

- Level of service, quality of assets offered;
- Lowest present value of Viability Grant support
- Lowest quantum of land
- Lowest present value of asset based support from the Government;
- Highest share (or present value of) of revenue;
- Lowest unit value or present value of payments by GoK;
- Highest upfront payment (or present value of upfront payments);
- Highest present value of future payments;
- Lowest concession period;
- Lowest unit value or present value of user fees;
- Highest premium on (or present value of) equity shares offered.

29. A Private Sector Participant (Proposal Initiator) may submit a *suo-moto/* innovative proposal (Original Proposal) to GoK/ GoK Agency for setting up an Infrastructure Project containing the following:

- Articulation of the public need for the project
- Requisite technical details, i.e., details of alignment/site, estimates of cost, etc.
- Cost incurred by the Proposal Initiator for the development studies related to the project.

GoK would, in the first instance, assess the public need for the Infrastructure Project. In case the Infrastructure Project is found to satisfy a public need, GoK would assess the technical feasibility/ suitability of the Original Proposal and modify the same, if required. GoK may carry out additional studies for the project, if required.

After evaluating the proposal and considering it suitable, GoK would, put up competitive bidding for counter proposals ("Swiss Challenge"). The Original Proposal (except proprietary information and details of the financial proposal) and contract principles of the Original Proposal would be made available to any interested applicants. If the competitive bidding process results in a superior proposal, the Proposal Initiator would be given an opportunity to match the competing counter proposal within a stipulated time-frame, and be selected as the project concessionaire. If the Proposal Initiator declines to match the superior counter proposal, then the applicant that has made the superior proposal would be selected as the concessionaire. Upon such selection, GoK/ GoK Agency concerned shall cause/ arrange to reimburse to the Proposal Initiator, a part or the whole of the development costs, as determined upfront and declared in the bidding documents, and may recover the same from the successful bidder.

30. GoK would evaluate all proposals received for any Infrastructure Project. GoK may also choose to appoint suitable external advisors or consultants, where necessary, for the purposes of evaluation.

31 In order to facilitate expeditious project implementation, GoK would endeavour to conclude the evaluation process for all Infrastructure Projects within 90 days from the date of submission of the final proposals. In the case of suo-moto proposals, GoK would decide to proceed with the bidding process within 180 days of their submission.

In any event, GoK would endeavour to provide all necessary State-level clearances and enable implementation of any Infrastructure Project being taken up through Public Private Partnerships within 180 days from the date of submission of the final proposals for such project.

E. Regulatory Framework

32. Given that availability of unencumbered land in a time-bound manner is a critical pre-requisite for most Infrastructure Projects, GoK intends to set in place suitable mechanisms, for facilitating expeditious acquisition of land for such projects. If found necessary, GoK would also consider promulgating a specific legislation for expeditious acquisition of land for infrastructure projects covered under this Policy.

33. Since many infrastructure facilities and services have natural monopoly characteristics, independent regulation may be desirable to ensure that the interests of both users and service providers are kept in view.

34. GoK intends to set up independent regulatory[3] authorities for some of the infrastructure sectors. The role of the regulator would include setting norms for entry and exit, tariff fixation, and establishing standards for construction, operations and maintenance for the facilities/ services. However, the setting up the regulatory authorities would be decided based on the specifics of each sector.

F. Institutional Framework

35. At present the process of project identification and development is handled by the various GoK departments and agencies and in case of urban projects by the respective urban local bodies. The Infrastructure Development Department (IDD) of the Government of Karnataka, which has been set up as the nodal agency to streamline the process of appraisal and approval of Infrastructure Projects, shall

[3] also multi-utility regulators

facilitate various GoK departments in developing Infrastructure Projects through PPPs.

36. GoK has set up a "PPP Cell" in the IDD. The PPP Cell is headed by the Principal Secretary - IDD, and shall be adequately staffed. iDeCK will provide technical advice and support to the PPP Cell. The PPP Cell may also engage consultants as and when necessary. The PPP Cell will be the nodal agency to receive the proposals in respect of the PPP projects and place them before the SWA for consideration and approval. The PPP Cell may invite/ co-opt representatives from the private sector, nominated by State-level Industrial fora such as ASSOCHAM, CII, FKCCI, and KASSIA *et.al.*

37. GoK shall set up a District PPP Committee at the District level, to co-ordinate and facilitate the implementation of infrastructure projects, including facilitation for obtaining clearances and approvals on a PPP route. The District PPP Committee shall be chaired by the Deputy Commissioner of the concerned district. The District PPP Committee shall have officers of appropriate rank, nominated by the GoK, as well as upto three representatives from the private sector, nominated by State-level Industrial fora such as ASSOCHAM, CII, FKCCI, and KASSIA et.al.

38. IDD would be duly strengthened with staff having appropriate skills to enable it to co-ordinate and integrate the necessary procedures and processes for facilitating Government/ Government Agencies in expeditious project approval and implementation. Simultaneously, capacity would also be built up in Government/ Government Agencies at the State and District level, to formulate and implement Infrastructure Projects on a PPP basis. IDeCK would support IDD and other GoK departments/ agencies in developing and financing Infrastructure Projects on a PPP basis. The PDF and PIF administered and managed by iDeCK, on behalf of GoK, would be utilized for this purpose, where appropriate.

39. A Single Window Agency (SWA) has been set up at the State Level under the Chairmanship of the Chief Secretary to approve the projects under PPP projects upto Rs. 50 Crores, and to recommend the projects above Rs. 50 Crores to the State High Level Committee under the Chairmanship of the Chief Minister constituted under Section 3 of the Karnataka Industries (Facilitation) Act 2002. In the case of all

PPP proposals upto Rs. 50 Crore, the concerned department shall, in consultation with the Infrastructure Development Department place them before the Single Window Agency for PPP headed by the Chief Secretary for approval. For all proposals in excess of Rs. 50 Crores, the Single Window Agency for PPP will scrutinize the proposals and make its recommendations to the High Level Committee, headed by the Chief Minister, for approval. The IDD, as the nodal department for PPP, with support from iDeCK, shall assist the concerned departments in the evaluation of all such projects. The IDD shall also assist the Single Window Agency for PPP and HLC in evaluating and deciding upon specific proposals.

40. IDD would set out the process for scrutinizing and clearing all investment proposals, frame guidelines for assessing the feasibility of private investment, set in place standard procurement documents and framework agreements, and assist the Government/ Government Agencies in the procurement of developers. IDD would also facilitate the Government/ Government Agencies, to develop and implement Infrastructure Projects in the PPP format, in an expeditious manner.

4 In order to facilitate financing of project development and implementation in an efficient, sustainable and expeditious manner, GoK would use its "Infrastructure Initiative Fund." IDD would set out the policy and regulatory guidelines and provide the necessary institutional support for operations and management of the Fund. All fees and charges[4] accruing from project development and investment initiatives of IDD/ concerned Government/ Government Agency, would be credited to the Infrastructure Initiative Fund. GoK would also make contributions to the Fund through budgetary provisions and/or other sources, from time to time, as it may deem appropriate.

42. Based on the strategy developed for each sector, IDD, in consultation with GoK Departments/ Agencies, would prepare a road map for infrastructure development in the State that will:

- Identify critical projects in different sectors that need immediate attention;
- Identify projects where significant benefits of network extension can be exploited for integrated infrastructure development;

[4] such as project development fees, application / tender charges, concession payments, interest charges, guarantee payments, taxes, cesses etc.

Explore the scope for PPPs in developing new Infrastructure Projects and augmenting existing infrastructure facilities and encourage such participation through appropriate incentives;

Prepare a shelf of developed projects for posing on a PPP format;

Mobilize resources through appropriate policy measures to supplement private sector investment, especially in the case of commercially non-viable projects;

Identify and resolve bottlenecks in the institutional framework that are likely to impede investments and therefore provide a conducive environment for infrastructure development through PSP;

Facilitate the conversion of approved projects into the implementation phase.

43. The institutional roles and responsibilities are set out in Schedule II.

44. GoK also recognizes the role of public opinion and stakeholder participation in facilitating Infrastructure Project development and implementation. Since the viability of projects is contingent upon cost to the final user, it is important to ascertain "what the market can bear". Mobilizing public opinion and ensuring stakeholder participation is thus an integral part of Infrastructure Projects. IDD would collaborate with professional bodies, NGOs, Industry Associations, and User Groups in facilitating this process.

G. Incentives and Concessions

45. GoK would provide the incentives and concessions set out in Schedule III to promote private finance initiatives in infrastructure development. These would be available to all projects falling in the ambit of Para 13 of this Policy. Investors would be eligible for any other additional incentives and/or concessions proposed/available for projects under existing sectoral policies/ proposed sector-specific strategies, but GoK shall take a holistic view of the totality of incentives and concessions, vis-à-vis the viability requirements of the project. In addition, several of these projects would also enjoy tax benefits under the Income Tax Act, 1961, as delineated by the Government of India.

46. In case of projects where no private investments in the form of private equity participation are envisaged, and where the government agency or implementing

authority directly awards the project to a contractor following a standard procurement process, but not under a specific concession structure as described in Para 22 - 24 of this document, no incentives and concessions would be available under this Policy.

47 To enhance commercial viability of projects, GoK may allow, wherever necessary, the Concessionaire/ SPV to develop utilitarian services or other socially acceptable commercial activities such as development of hotels/motels, gas stations, or recreational centres etc., on the Infrastructure Project site.

48 Subsidies in the Infrastructure sector would be based on the need for balancing adequate cost recovery, with social needs and regional development. Wherever subsidy is necessitated for social/ regional needs, it shall be the endeavour of the government to ensure that such subsidies are direct and transparent. In all other cases, it shall be the endeavour to price services to be commensurate with the real costs of service provision, and sustainability of the project.

49. To the extent that the project parameters may permit, every project shall endeavour to maximise employment opportunities to the local population of the State of Karnataka.

V Duration and Review of Policy

50. This policy would come into force with effect from the date of issue of Government notification and would be effective till the formulation of a new infrastructure policy.

51 There would be a mid-term review of this Policy based on a critical assessment of feedback from stakeholders, and changes in scope that are deemed_necessary and desirable, would be incorporated at that stage.

52. The government recognizes that expanding and institutionalising the scope of PPP in provision of infrastructure may also necessitate appropriate changes in the existing legislative framework. It is however felt that the present framework offers sufficient

scope for PPPs in provision of Infrastructure. The specific legislative constraints for PPPs would also be reviewed and addressed during the mid-term review.

VI Sectoral Strategies

53. The broad principles set out in this document would govern the various strategies to be developed for each sector. The concerned administrative departments would finalize the sector strategies and action plans thereunder within six months of the date this Policy comes into force.

54. As regards the power sector, the recent policies announced by GoK with respect to privatisation[5] and restructuring and the Electricity Act 2003 would, *inter-alia*, provide the underlying basis for implementation of the proposed sector development strategy.

55. IDD would assist Government/ Government Agencies in making a concerted effort to set out an action plan for already identified project development opportunities in various infrastructure sectors in the immediate term. IDD would use the services of iDeCK, which has been assisting several of these departments on various projects and policies in the past, particularly in the PPP domain, to provide the necessary project development and implementation support. For this purpose, IDD would interface with other departments concerned, such as the Public Works Department, Urban Development Department, Energy Department, Commerce & Industries Department, and Department of Information, Tourism & Youth Services, among others, to advise on and co-ordinate identified and new project development activities.

[5] Detailed Policy Statement on Karnataka Power Sector Restructuring and Privatisation Programme; Independent Power Producers Policy

SCHEDULE I - Evaluation of Risks & Risk Mitigation Measures

Projects are subject to various types of risks during the development, construction and operations periods. In a PPP framework, these risks are typically assigned to parties best able to handle them. The table below sets out the typical project risks envisaged during the project life-cycle and their mitigation measures in a standard Concession (BOT) contract.

I. Project Development Period		
Risk Description	**Assigned to**	**Risk Mitigation Measure**
Statutory clearances needed prior to implementation including Environmental Clearance	EPC Contractor/ Concessionaire	Government shall facilitate obtaining all such clearances
Land Acquisition	Concession Agreement (CA)	Government shall set in place appropriate process to expedite land acquisition
Delay in Land Acquisition	CA	-do-
II. Construction Period		
Project Design Risk	EPC Contractor / Concessionaire	Detailed technical evaluation by independent Technical Consultant Independent Engineer entrusted with detailed scope of work to ensure that project conforms to design standards and specs.
Political Force Majeure Event (War, invasion, armed conflict or act of foreign enemy, strikes, agitation, blockade, embargo, insurrection, military action, civil commotion)	CA	Agreement typically lays down provisions for extension in time, sharing of costs and payment of compensation by the CA under such events
Damage/Injury to 3rd parties	EPC Contractor / Concessionaire	Insurance generally procured by EPC Contractor with an extension of cross liability
Cost Overrun Risk	EPC Contractor / Concessionaire	Construction cost estimates Independent revalidation of construction costs estimated by EPC Contractor. Fixed time/fixed price contracts. Risk related to cost overrun passed on to the EPC Contractor. Insurance Cover

Risk Description	Assigned to	Risk Mitigation Measure
Project Completion/Time Overrun Risk	EPC Contractor / Concessionaire	Fixed time /fixed price contract with EPC Contractor Performance Security provided by EPC Contractor, including defects liability period Retention Money Equity stake in project SPV
Inflation Risk	EPC Contractor / Concessionaire	Transferred to the EPC Contractor / Concessionaire under the EPC Contract
Technology Risk	EPC Contractor / Concessionaire	Concessionaire to provide warranties /commitments to upgrade technology to meet output specifications
Termination Risk	Promoters/ Concessionaire/Lenders	Termination Compensation Substitution/Step-in Rights to Project lenders
III. Operations Period		
Traffic/ Demand Risk	Concessionaire/ CA Depending on project	Detailed Traffic Studies by independent traffic consultant/expert. Annuity structures/ Financial Support
Revenue Risk	Concessionaire/ CA	Traffic surveys/ willingness-to-pay studies
Revenue Leakage Risk	Concessionaire/ CA	Independent Auditor
Maintenance Standards	O&M Contractor/ Concessionaire	Performance Security Monitoring by Independent Engineer.
Increase in O & M costs	O&M Contractor/ Concessionaire	Fixed Price Contract
Injury to the Project road users/third parties	O&M Contractor/ Concessionaire/ Insurance Co.	Insurance Cover

Risk Description	Assigned to	Risk Mitigation Measure
Environmental Risk	O&M Contractor/ Concessionaire	Concessionaire/ O&M Contractor to meet the accepted environmental norms during the operations period. This could be enforced through suitable clauses in the Concession Agreement.
Termination Risk	CA/Concessionaire/Lenders	Termination Compensation Substitution/ Step-in-Rights to Project Lenders
IV. Financing Risks		
Equity	Sponsors/Investors	Sponsors generally required to maintain in aggregate a minimum shareholding of in the paid up equity capital of the Concessionaire Project lenders insulated from risk related to equity subscription
Term Debt	Lenders	Suitable security creation
Interest Rate Risk	Concessionaire	Fixed interest rates on debt, witr reset options
Adverse FX Risk	Concessionaire/ CA	Funding through rupee debt In case of forex funding for critical projects, exchange rate risk could also be partly or fully borne by CA through appropriate agreements and hedging mechanisms
V. Other Risks		
Expropriation, including creeping nationalization, changes in legislation, discriminatory actions on tolls, etc.	CA	Such acts defined as direct political force Majeure events and remedies are generally provided under the Concession Agreement.

SCHEDULE II - Institutional Roles & Responsibilities

Govt./ Govt. Agency/ Organization	Key Tasks
Government of Karnataka (GoK)	• Formulation and review of policy measures • General administration of policy measures • Co-ordination between various departments for facilitating project implementation • Performance evaluation
Infrastructure Development Department, GoK	• Co-ordination of policy level initiatives • Part of Single Window Agency (SWA) for PPP for approval of private investment proposals up to Rs. 50 Crore • Part of High-Level Committee (HLC) for Infrastructure Projects over Rs. 50 Crore • Assistance to HLC and SWA for evaluation of all Infrastructure Project proposals to be implemented through PPP • Co-ordination of project development
High Level Committee	• Facilitate and approve PPP projects over Rs. 50 Crore
Single Window Agency	• Facilitate, coordinate and scrutinise all PPP projects and approve projects up to Rs.50 Crore.
PPP Cell & District PPP Committee	• Facilitate project identification, development & implementation • Facilitate co-ordination between various departments • Facilitate obtaining clearances and approvals
iDeCK	• Secretariat/ Advisor to IDD/ SWA/ HLC • Co-ordination of policy level initiatives -preparation of sectoral strategies and action plans for successful project implementation • Administering training and skill development programmes • Co-ordination of project development for PPP projects • Project financing • Interface between government and private sector/industry

SCHEDULE III - Incentives and Concessions

The project would be allowed to charge user fees (tolls, port dues etc.) during the concession period.

Recognising the fact that infrastructure projects require special consideration in view of long gestation periods, low rates of return and higher risks, incentives and support such as tax holidays, tax exemptions, Viability Gap Fund, etc., have been provided under the purview of the GoI.

Apart from the incentives, concession and support available to the projects, the GoK proposes to offer the following incentives:

A. Facilitation

- Where it is not possible for private investors to obtain land required for the project on their own, the Government would acquire the land required for the project;
- Facilitation in obtaining clearances and approvals from various agencies;
- Facilitate in obtaining water and power required for the project.

B. Asset-based support

- Government land may be provided, subject to availability, at concessional rates;
- Wherever an Infrastructure Project by itself is not financially viable, the private investor may be allowed to acquire additional land on the same terms as the land for the main project, and develop suitable commercial activities to ensure a reasonable composite internal rate of return. Such development rights would be consistent with applicable law and land-use, and would include commercial complexes, hotels, housing complexes, and advertisement hoardings. Where permitted under local regulations, this would include relaxation in the applicable Floor-Space Index norms;
- Develop linkage infrastructure, for projects that need such critical linkages.

C Foregoing Revenue Streams

- Exemption from entry tax and special entry tax arising in the construction of the Infrastructure Project facility for a period of three years or till the date of completion of the project, whichever is earlier. Only machinery, equipments, and construction material would be eligible for this exemption. Further, the limit of exemption would be Rs. 25 Lakhs for machinery and equipment, and Rs. 1 lakh for construction material, or as officially notified by GoK from time to time. Such exemption would be applicable both to the developer of the infrastructure project, or any Person authorized to execute works in the infrastructure project;
- Concession on stamp duty on transfer of land[6]:
    - i. Zone 1: 100%
    - ii. Zone 2: 50%

[6] The Zones in this Policy shall be identical to that defined in the Industrial Policy (2006) of the Government of Karnataka

iii. Zone 3: Nil

- Concession on conversion fine on land:
    i. Zone 1: 100%
    ii. Zone 2: 50%
    iii. Zone 3: Nil

D. Contingent Guarantees

- In specific cases, guaranteed payment structures such as "Take-or-pay" (wherein there is an assurance of payment for the availability of a service) or "supply-or-pay" (wherein there is an assurance of payment for the non-availability of a service) would be considered.

E. Financial Support

- Viability gap finance from the Central Government: The Government of Karnataka would sponsor the project for release of Viability Gap Fund, from the Government of India
- The Government of Karnataka would also provide additional Viability Gap Fund, over the VGF of the Central Government
- Provided that the quantum of total Viability Gap Fund shall be determined after clearly and explicitly calculating all project costs and incentives/ concessions:
    i. Taking into account all costs of the projects, excluding cost of land, and land related charges such as Stamp Duty & Conversion Fine
    ii. Taking into account all other incentives granted, including asset based support and the foregoing of revenue streams, and including any other financial incentive granted under any other sector policy, or scheme of the Central Government, Central Government Agency, Government or Government Agency.