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News Clippings on Public Private Partnership



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Reading Material

Toll, operate and transfer: Highways deal a good start

Anjan Dasgupta, HSA Advocates June 1, 2018

A consortium led by Macquarie, an Australia-based capital fund manager, has bagged the tolling, operation and maintenance rights for a bundle of nine stretches of national highway, all completed and in operation, on a public-private partnership (PPP) basis. This is the first time the government of India through the National Highways Authority of India (NHAI) has auctioned projects which are completed and in operation under the toll, operate and transfer (TOT) model to monetize assets.

The projects are to be handed over for a concession period of 30 years for tolling, operation and maintenance, after which the projects are to be transferred back to the NHAI. The government completed construction of these projects using its own sources of funds. The consortium was selected through international competitive bidding on the basis of quoting the highest aggregate concession fee for all the nine projects in the bundle. The concession fee for a project was the summation of the net present value of net free cash flow expected to be generated by the project during the entire concession period as estimated by the consortium applying the consortium's own discount rate. The aggregate concession fee as quoted by the consortium of Macquarie and Ashoka Buildcon

for upfront payment to the NHAI was ₹96.81 billion (US\$1.45 billion). This was 54% higher than the initial estimated aggregate concession fee of ₹62.58 billion for all the nine projects calculated by the NHAI. To calculate the initial estimated concession fee for a project the NHAI applied a discount rate of 3% over the bank rate for debt, as then specified by the Reserve Bank of India, and a normative rate of 14% for return on equity.

Apart from the winning bid, three other bids were received, from Brookfield (₹75.11 billion), IRB and Autostrade (₹69.3 billion) and Roadis and National Investment and Infrastructure Fund (₹66.11 billion). The nine highway stretches totalling about 680 kilometres are in Andhra Pradesh and Gujarat. The NHAI has started preparing detailed project reports for an additional 1,700 kilometres of completed stretches, which it plans to bid out using the TOT model.

Under the TOT model, the pre-construction and construction risks, the project financing risk and initial operational risk of a project are totally borne by the government prior to handing over the completed projects to the private parties. Risks associated with pre-development works, land acquisition, resettlement and rehabilitation, environmental and regulatory approvals, time and

cost overruns, and high cost of funds during the construction phase are managed by the government as the government undertakes completion of construction and initial operation of the projects solely at its own risk. After handover of the projects, the consortium assumes the projects' finance, availability and market risks. Since the handed over projects are completed and in operation, the cost of finance is relatively less. The consortium has to ensure delivery of services at the required quality standards, which entails availability risk. The government can apply penalties if the consortium defaults on its service obligations. Market risk involves traffic risk, which falls on the consortium.

Success of the first round of bidding under this model has proved that there is good private finance appetite for operational infrastructure projects. This paves the way for financing of such projects by the government through use of public finance during the construction phase, when the risk is significantly higher, and thereafter, monetizing the constructed assets for an upfront premium during the operation phase. This bodes well for future infrastructure projects in India looking at attracting long-term capital providers such as pension funds.

This model can be replicated in other infrastructure sectors provided the government carefully selects the sector and pools the assets, where construction has been completed with government funding and operations have started. For achieving optimum results with any PPP model, the contractual framework contained in the concession agreement would need to be balanced, fair and transparent. Further, clear allocation of risks and obligations in respect of the different participants has to be achieved. The framework has to be based on best practices taking into account lessons learned from previous PPPs and extensive consultation with experts and stakeholders including government ministries, prospective investors and lenders. To start with, the government is looking at replicating this model in the airports sector. State governments can also start replicating this model for PPP projects in their respective states.

<https://www.vantageasia.com/toll-operate-transfer-highways-deal-good-start/>

'India's highway sector PPP model aids infra investments' – Moody's Report

India Infoline News Service | Mumbai | May 28, 2018 18:13 IST

Moody's reports that the HAM model adopted in India's highways sector, relative to more traditional PPPs, rebalances certain project risks between the public and private sectors.

Moody's Investors Service says that the increased use of public-private partnerships (PPPs) in India's highway sector supports private sector investment in other sectors, benefiting from government initiatives and the improving credit profiles of infrastructure developers.

"Private investment in highway projects had been declining in recent years amid issues such as slow project approvals and cost overruns. But the Indian government's introduction of the hybrid annuity model (HAM) in 2016 -- as a variation of PPPs -- has triggered new investment inflows," says Abhishek Tyagi, a Moody's Vice-President and Senior Analyst.

"Other sectors, such as port, shipping, and rail, have also started looking at improving the PPP framework in order to attract private investment to fund India's substantial infrastructure needs," adds Tyagi.

The Moody's report explains that the HAM model, relative to more traditional PPPs, rebalances certain project risks between the public and private sectors. In addition, the government provides funding during the construction phase, thus addressing some of the key concerns of the earlier model.

For example, as a result of the improved right-of-way risk allocation, the risk of delays in project completion is relatively lower for HAM projects because of the upfront availability of the majority (at least 80%) of right-of-way and other factors.

The new model has triggered a significant increase in projects awarded, with HAM projects accounting for around 46% of total awards in terms of highway length and 63% in terms of total value (Rs76,500cr) in the 12 months to March 2018.

In recent months, the government has implemented measures to attract private investment for India's vast infrastructure needs,

including in port and rail. The Ministry of Shipping has also proposed a new model concession agreement that helps clarify the language in and standardize PPP projects.

Finally, Moody's notes that the improving credit profiles of infrastructure developers is increasing their capacity to participate in PPP projects. However, their access to funding remains a key concern, with banks constrained by sector-specific exposure limits and existing stressed assets in their infrastructure portfolios.

Incomplete infrastructure puzzle

Phalasha Nagpal 3 April 2018 7:19 PM TWEET

A Public-Private Partnership (PPP) refers to a medium to long-term contract between the public and private sector with the objective of leveraging private sector resources and expertise in the development or management of asset or both. PPPs have immense potential for boosting India's economic development, particularly in the area of physical infrastructure. Since India first adopted PPP, it has come a long way in infrastructure development and growth. Experiencing an almost unparalleled re-emergence of PPPs in the past three decades and with over 1300 projects in

different stages of implementation according to the World Bank, we still do not have a dedicated law governing it. The need for infrastructure creation to support the economy and its gigantic working population could not be emphasised enough. With over 18 million unemployed youth in 2017 as per the International Labour Organisation, India stands at the risk of its demographic dividend turning into a demographic curse. Decades of underinvestment have led us to the brink of this debilitating infrastructure deficit. Despite several failures, PPP projects have played a critical role in overhauling India's collapsing infrastructure, with still a long way to go. With the youth all set to enter the workforce, India is hungry for world-class infrastructure to fuel its growth. Infrastructure development is expected to create massive employment opportunities and a foundation for a prosperous manufacturing sector. Estimates show that India would need a staggering investment equaling roughly half of its GDP (approximately over \$ One trillion) over the next few years to overcome its deficit. Bridging this gap alone is beyond the ambit of the public sector. Thus, private sector participation, backed by a strong economic policy and legislation, exclusively dedicated to PPP, is the key. The PPP environment has been dampened due to several reasons. Government data reveals that many projects have been stalled or terminated on account of red tape,

inequitable risk sharing, re-negotiation and so on. There is a loss of trust by private players to contract with public authorities. The absence of a strong policy and legislation governing PPP makes enforcement all the more difficult. For PPP, new legislation has been enacted in certain sectors and institutions have been set up. However, sector-specific guidelines and legislation is no substitute for having an exclusive policy and an umbrella law for PPP that cuts across sectors. A law governing PPP in infrastructure as a whole would cater to issues like the settlement of disputes, uniform procedures for various modes of bidding contracts, and ensuring that the contract renegotiation is not misused. For instance, specific Tribunals for PPP related projects could be set up which would cater to only PPP related disputes. With so many model concession agreements created and innovative contractual and financing mechanisms being adopted every decade, we need an undisputed non-contradictory body of legislation backing economic policy. India is in its first stage of PPP, accelerating strongly into the second phase. Research reveals that improper contractual norms and bidding procedures often result in delays, cost overruns, making projects financially or operationally unviable. Cases like Delhi Metro Rail Corporation and Reliance partnership in the Airport Metro line or the under-estimation of traffic on the

Delhi-Gurgaon Expressway showcase how PPP projects can go wrong. Putting checks and balances in place would eliminate moral hazards and, thus, reduce incidences of aggressive bidding, understating costs, inequitable risk sharing and minimise opportunistic behaviour. PPP law should identify public authorities that will be permitted to award concessions and enter into PPP, keeping a check on silo operations. It should state the sectors wherein PPP may be adopted, giving impetus to priority sectors and keeping certain sectors out of the ambit of PPP. Regulatory competence should be entrusted upon independent bodies, free from political interference under the PPP law. With innovative contractual methods being adopted, like asset recycling, a law is required to create rules that apply to all contractual methods. Allowing duration, extension, termination of concession contracts and renegotiation to be governed by law, renegotiation would become limited to unforeseen and force majeure only. Legal provisions will ensure greater digitisation in payments and tax compliances. Furthermore, with the credit crunch, high risks of default in viability gap funding and the virtually absent corporate bond market, we must attract international funds through PPP. A legal framework in place would help make international institutional investors conducive towards contracting with public authorities. Moreover, India

reserves around 20 per cent value of PPP contracts for SMEs in order to incentivise them and provide a level playing field through fair access. A legally backed provision regarding the same would help strengthen implementation. Lastly, the settlement of disputes, both between concessionaire and contracting authority as well as users of the facility, can only be streamlined and expedited with a robust dispute resolution mechanism under PPP law. The presence of legal time limits would allow timely resolution and, thereby, increase the private sector's confidence in PPP contracts and encourage greater participation. Furthermore, a comprehensive exit policy in PPP law would be additionally required to create trust in procedures. With penalties guarding all facets, the foundation of PPP in India would be strengthened and revitalised in order to become the vehicle to pave India's path into a brighter future

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<http://www.millenniumpost.in/opinion/incomplete-infrastructure-puzzle-292551>

Railways Looks At Public-Private Partnership, To Outsource Operations At Five Stations

by Swarajya Staff - Mar 31 2018



Looking to improve passenger comfort, Indian Railways (IR) has decided to outsource operations at five railway stations to non-state, private players. The pilot project, called Integrated Station Management will see the following stations – Pune Junction, Krantivira Sangolli Rayanna Bengaluru City, Chandigarh, Secundrabad station in Hyderabad, and the Anand Vihar terminal in Delhi

– being handed out to private partners for operations, taking the total number of privately operated railway stations in India to six. Habibganj station in Bhopal was handed over last June to the Bhopal-based Bansal Group.

The stations will be handed over to the Indian Railways Station Development Corporation (IRSDC) which will then invite bids from the private sector. While core operations such as train movement and signalling will be with the railways, other functions such as running stalls, selling platform tickets, display boards, advertising and parking will be handed over to the winning bidder.

Railway officials said that the process of handing over the stations to IRSDC was in progress, following which bids would be called for privatisation. Privatisation of station operations has faced hurdles in the past with the NITI Aayog re-flagging the plans and a lack of interest from the private sector. Owing to poor response, the

Railways decided to take up redevelopment of 68 stations on its own recently.

The revenue sharing model is yet to be finalised but railway sources indicated that it would be based on the model followed by the hotel industry.

<https://swarajyamag.com/insta/railways-looks-at-public-private-partnership-to-outsource-operations-at-five-stations>

Government nod to revised concession pact for PPP projects at ports

Published: January 3, 2018 **By** [PTI FeedsEmail](#)

The government has approved a revised model concession pact for projects based on public private partnership (PPP) design at major ports to make the investment climate more investor friendly.

The revised Model Concession Agreement (MCA) includes providing an exit route to developers by way of divesting their equity up to 100 per cent after completion of two years from the Commercial Operation Date (COD), similar to the MCA provisions of the highway sector.

The amendments in the MCA envisage constitution of the Society for Affordable Redressal of Disputes – Ports (SAROD- PORTS) as dispute resolution mechanism similar to provision available in highways sector.

The government said under provision of additional land to the concessionaire, land rent has been reduced from 200 per cent to 120 per cent of the applicable scale of rates for the proposed additional land.

“Concessionaire would pay royalty on “per MT of cargo/TEU handled” basis which would be indexed to the variations in the WPI annually,” the statement said. This will replace the present procedure of charging royalty which is equal to the percentage

of gross revenue, quoted during bidding, calculated on the basis of upfront normative tariff ceiling prescribed by Tariff Authority for Major Ports (TAMP).

The government said this will help to resolve the long pending grievances of public private participation (PPP) operators that revenue share is payable on ceiling tariff and price discounts are ignored.

The problems associated with fixing storage charges by TAMP and collection of revenue share on storage charges which has plagued many projects will also get eliminated.

The statement said concessionaire would be free to deploy higher capacity equipment /facilities/ technology and carry out value engineering for higher productivity and improved utilisation and /or cost saving of project assets.

In the new agreement, “actual project cost” would be replaced by “total project cost”.

The new definition of “change in law” will also include imposition of standards and conditions arising out of TAMP guidelines /orders, environmental law and labour laws and increase and imposition of new taxes, duties, etc. for compensating the concessionaire. Since the viability of the project was affected, concessionaire will now be compensated for the increase and imposition of new taxes, duties etc. except in respect of imposition/increase of a direct tax, both by central and state government.



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