



Guidelines

Institutional Mechanism for Monitoring of PPP Projects

Planning Commission
Government of India

Contents

<i>Foreword</i>	<i>i</i>
<i>Office Memorandum</i>	<i>iii</i>
<i>Guidelines for an Institutional Mechanism for Monitoring of PPP Projects</i>	<i>1</i>
<i>Background</i>	<i>1</i>
<i>Role of Government</i>	<i>1</i>
<i>Oversight during implementation</i>	<i>2</i>
<i>Nature and content of oversight</i>	<i>3</i>
<i>Concession Agreements</i>	<i>4</i>
<i>Guidelines for Monitoring of PPP projects</i>	<i>5</i>
<i>Institutional Framework</i>	<i>5</i>
<i>Reporting Formats</i>	<i>9</i>
<i>Sanction of Manpower</i>	<i>9</i>
<i>Conclusion</i>	<i>9</i>

Foreword

Traditionally, infrastructure has been financed through public funds. During the past few years, however, private participation in financing and operation of infrastructure projects has increased rapidly and as a result, the share of private investment in the total investment in infrastructure has risen from 22 per cent in the Tenth Plan to 38 per cent in the Eleventh Plan and is expected to reach about 47 per cent during the Twelfth Plan. In particular, a large number of projects in highways, ports, airports, urban development, railways and other sectors have been undertaken through Public Private Partnership (PPP).

PPP projects are typically based on long term concession agreements which specify outputs such as quality of service and performance standards that have a direct bearing on users of such projects. These agreements normally empower the concessionaires to use public assets for building projects and to collect statutory user charges for provision of infrastructure services. As such, these projects continue to be public projects even though private entities make investments and undertake delivery of specified services against payment of user charges.

A contract is as good as its enforcement. Hence, the purpose of a well structured concession can be defeated if the terms of the contract are not enforced. If deficiencies in the performance of concessionaires are not addressed in an institutionalised manner, criticism of poor delivery will be legitimately directed towards the government and it will be difficult to defend such criticism. The Guidelines issued by the Government for setting up an institutional mechanism to monitor PPP projects respond to the need for ensuring compliance of the terms of the concession agreements with the objective of safeguarding the interests of the public exchequer and the user.

While a number of PPP projects have been awarded in different sectors, and many more are in the pipeline, most of the project authorities have not yet created an

institutional mechanism for monitoring these projects with a view to enforcing the obligations of the concessionaires, especially with respect to the quality of service and compliance with terms that have a bearing on public interest. This could lead to situations where government and user interests are compromised, which must to be avoided.

These Guidelines have been approved by the Cabinet after extensive inter-ministerial consultations. The institutional structure envisaged under these Guidelines requires the creation of a two-tier mechanism for monitoring PPP projects. A Monitoring Unit would be set up at the project level while a PPP Performance Review Unit would be constituted at the level of the Ministry or the State Government, as the case may be. Monitoring is to be carried out primarily through a reporting mechanism. The Monitoring Reports for each project would include compliance of contract terms, adherence to time lines, assessment of performance, remedial measures and imposition of penalties. Non-compliance with the terms of concession agreements would be reported by the respective Ministries to the Planning Commission and Finance Ministry once every quarter for preparing a consolidated report to be placed before the Cabinet Committee on Infrastructure.

It is expected that the concerned Ministries and project authorities will establish the aforesaid institutional arrangements with the objective of ensuring that the concessionaires of PPP projects provide efficient and cost effective services consistent with the principles of good governance, accountability and efficiency.

(Montek Singh Ahluwalia)

August 1, 2012

F.No.-14011/09/2008-Infra (Part-II)
Government of India
Planning Commission
(PPP & Infrastructure Division)

Yojana Bhavan, New Delhi
Dated, the 08th August, 2012

OFFICE MEMORANDUM

Subject: Institutional Mechanism for Monitoring of PPP projects – regarding.

Pursuant to the approval of the Cabinet Committee on Infrastructure (CCI), and in supersession of OM No. N-14070/10/2009-Infra dated May 08, 2009, the undersigned is directed to convey the Guidelines for an Institutional Mechanism for Monitoring of Public Private Partnership projects (the “PPP Projects”) to be followed by all Ministries, Departments, statutory authorities and Public Sector Undertakings (the “Project Authorities”). These Guidelines shall also apply to all State projects that receive Viability Gap Funding (VGF) from the Central Government.

2. Context

2.1 PPP projects are typically based on long term concession agreements which specify clear and distinct outputs, such as quality of service and quantifiable performance standards that have a direct bearing on the users of such projects. These agreements normally empower the concessionaire to use public assets for building infrastructure projects. The concessionaire is also empowered to levy and collect user charges for the use of public assets. However, the Government always remains responsible and accountable for delivery of services to the users. These projects, therefore, require close monitoring by the Government with a view to ensuring that the provisions of the respective concession agreements and the applicable laws are enforced.

2.2 In managing a PPP Project, the Government should aim at ensuring that the services being delivered to the users meet the agreed time, cost, quantity and quality standards. It is, therefore, necessary to create a well-defined institutional structure that oversees contract performance effectively. For this purpose, the requirements of monitoring and enforcement of the contract terms need to be fully understood and addressed in respect of each concession agreement.

3. *Need for Guidelines*

3.1 The aforesaid Guidelines respond to the need for establishing an institutional framework that would ensure compliance of the contractual framework contained in the concession agreements for PPP Projects mainly with a view to safeguarding the interests of the public exchequer and the users. While a number of PPP projects have been awarded in different sectors, and many more are in the pipeline, most of the Project Authorities have not yet created an institutional mechanism which monitors such projects for enforcing the obligations of the concessionaires, especially with respect to the quality of service as well as the user charges. This could lead to a situation where government and user interests are compromised due to inadequate compliance of the terms of the contract.

3.2 All Project Authorities are, therefore, advised to follow these Guidelines for monitoring their respective PPP projects, which are based on agreements between the Project Authority on the one side and a private entity on the other side, for delivering an infrastructure service on payment of user charges, tariff or annuity. These Guidelines may also be adopted for PPP Projects in social sectors where similar monitoring and enforcement is necessary. The key features of the Guidelines are outlined below.

4. *Institutional Framework*

4.1 The monitoring mechanism for overseeing implementation of the agreed terms and delivery of specified services should be capable of ensuring that the concessionaire carries out its obligations in accordance with the concession agreement, especially with regard to the provisions that affect user interest and the public exchequer. It should also be ensured that the medium and long-term objectives are clearly identified and pursued.

4.2 To enable a concessionaire to perform its obligations, a concession agreement also provides for certain obligations to be performed by the Project Authority. The monitoring mechanism should also oversee the performance of the obligations of the Project Authority with a view to ensuring that it is not in breach of the contract.

4.3 The Project Authorities may create a two-tier mechanism for monitoring the performance of PPP Projects. This should consist of:

- **PPP Projects Monitoring Unit (PPP PMU)** at the Project Authority level; and
- **PPP Performance Review Unit (PPP PRU)** at the Ministry level; or State Government level, as the case may be.

4.4 The PPP PMU and PPP PRU should be associated with the respective PPP projects as early as possible preferably at the award stage itself.

5. *Monitoring Reports*

5.1 Monitoring by the PMU should, inter alia, cover the following aspects to be summarised in a monthly ‘PPP Project Monitoring Report’ which should be submitted to the PPP Performance Review Unit within 15 days of the close of the relevant month:

- (a) Compliance of the conditions precedent and achievement of financial close within the period specified in the concession agreement;
- (b) adherence to the time lines and other obligations specified in the concession agreement;
- (c) streamlining of, and adherence to, the reporting procedures between the concessionaire and the project authority, which may also include an MIS;
- (d) assessment of performance against laid down standards;
- (e) remedial measures and action plan for curing defaults, especially when performance standards are not fulfilled;
- (f) imposition of penalties in the event of default;
- (g) levy and collection of user charges based on approved principles;
- (h) progress of on-going disputes and arbitration proceedings, if any; and
- (i) compliance with the instructions of the project authority or Independent Engineer, as the case may be.

5.2 The PPP PRU should review the PPP Project Monitoring Reports submitted by the different PMUs and oversee or initiate action for rectifying any defaults or lapses. The PRU should also prepare quarterly reports on the status of such PPP Project. These reports should, in particular, focus on any non-compliance relating to the provisions of the relevant contract, especially in terms of the standards of performance or loss to the public exchequer and the users. It should clearly indicate the steps taken or required to be taken by the Project Authority in accordance with the provisions of the relevant contract. The PRU will submit its quarterly report to the competent authority. The quarterly report should include:

- (a) a compliance report regarding implementation of the various PPP projects as per the provisions of the respective contracts;
- (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; and
- (d) matters affecting the interests of the public exchequer in relation to the expenditures and revenues arising from the PPP project.

5.3 The PPP Performance Review Unit should cause to be conducted an evaluation of the project performance, including a social audit wherever applicable, once every two years.

5.4 Illustrative formats of the Reports to be submitted by PPP PMU and PPP PRU are at Annex- I and II of the Guidelines. These are indicative in nature and meant for guidance of the PRUs who are expected to evolve the required formats for each project separately.

5.5 The respective Ministries are advised to send a quarterly compliance report to the Planning Commission with a copy to the Ministry of Finance. Planning Commission, in consultation with the Ministry of Finance, will prepare a summary of these reports, along with recommendations relating to further action/ improvements, which would be placed before the Cabinet Committee on Infrastructure (CCI) once every quarter.

6. *Sanction of manpower*

Central Ministries/ authorities dealing with a large number of PPP projects may consider obtaining sanction for additional manpower for manning the PPP PMUs and the PPP PRUs.

7. *Conclusion*

7.1 The process of performance monitoring needs to be dynamic and under constant review because project circumstances undergo a change over time due to the long duration of PPP contracts. Since the accountability for providing infrastructure services primarily rests with the government, and the concessionaire is only a grantee of the government who acts in accordance with the terms of the concession, it is the responsibility of every Project Authority to safeguard user interests and the public exchequer. The monitoring mechanism is only a tool for ensuring that the objective of each PPP Project is fulfilled. The Project Authorities are, therefore, advised to ensure appropriate project-specific monitoring arrangements to ensure compliance of the above.

7.2 It may please be noted that these Guidelines are generic in nature, and meant to assist the Project Authorities in evolving their own institutional mechanism. The Project Authorities may, if deemed necessary, suitably strengthen or augment the suggested mechanism for ensuring that the objectives of PPP Projects are fully realised.

(Namita Mehrotra)
Director (Infra)
Telefax: 2309 6618

1. Secretary, Department of Economic Affairs, Ministry of Finance, North Block, New Delhi
2. Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi
3. Secretary, Ministry of Home Affairs, North Block, New Delhi
4. Secretary, Ministry of Road Transport & Highways, Transport Bhawan, New Delhi
5. Secretary, Department of School Education & Literacy, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi
6. Secretary, Ministry of Urban Development & Poverty Alleviation, Nirman Bhawan, New Delhi
7. Secretary, Department of Health & Family Welfare, Nirman Bhawan, New Delhi
8. Secretary, Ministry of Shipping, Transport Bhawan, New Delhi
9. Secretary, Ministry of Power, Shram Shakti Bhawan, New Delhi
10. Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi
11. Chairman, Railway Board, Rail Bhawan, New Delhi
12. Secretary, Ministry of Rural Development, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi
13. Secretary, Ministry of Housing & Urban Poverty Alleviation, Nirman Bhawan, Maulana Azad Road, New Delhi
14. Secretary, Department of Food and Public Distribution, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi
15. Secretary, Ministry of Drinking Water & Sanitation, 9th Floor, Paryavarn Bhawan, CGO Complex, Lodhi Road, New Delhi
16. Secretary, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi
17. Secretary, Department of Sports, Ministry of Youth Affairs & Sports, Shastri Bhawan, New Delhi
18. Secretary, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.

Guidelines for an Institutional Mechanism for Monitoring of PPP Projects

Background

- 1.1 In its development strategy, the Government has recognised that adequate, cost-effective and quality infrastructure is a pre-requisite for sustaining the growth momentum. Infrastructure development is capital intensive and requires huge resources. Traditionally, infrastructure has been largely funded through public investment. However, in view of limited budgetary allocations and lack of capacity within the government to implement large scale expansion of infrastructure, the strategy of the government has relied significantly on promoting investment through a combination of public investment and private participation. Private participation in the provisioning of infrastructure has grown significantly from 22% in the Tenth Plan to 38% in the Eleventh Plan and expected to go up further to 47% during the Twelfth Plan. A number of projects have been rolled out in highways, ports, urban development, railways, airports and other sectors through the Public Private Participation (PPP) mode. Development of PPP projects has been initiated in the social sectors as well.
- 1.2 PPP projects are typically based on long term concession agreements which specify clear and distinct outputs, such as quality of service and quantifiable performance standards that have a direct bearing on the users of such projects. These agreements normally empower the concessionaire to use public assets for building infrastructure projects. The Concessionaire is also empowered to levy and collect user charges for the use of public assets. However, the Government always remains responsible and accountable for delivery of services to the users. These projects, therefore, require close monitoring by the Government with a view to ensuring that the provisions of the respective concession agreements and the applicable laws are enforced.

Role of Government

- 2.1 The primary responsibility for providing services to the users would always rest with the Government and the concessionaire can only be regarded as a grantee of the Government for delivery of specified services on behalf of the Government.

This is especially so because infrastructure projects typically provide non-discriminatory services that are regarded as public goods. Moreover, such projects are often monopolistic in character and, therefore, require government intervention for preventing user exploitation. In effect, PPP infrastructure projects are public projects in which private capital is being deployed for the benefit of the economy and the users. In case services of requisite standard are not provided to the public, it would give rise to legitimate criticism of the Government and even allegations of collusion between the project authority and the concessionaire.

- 2.2 In managing a PPP Project, it is critical for the Government to ensure that the services being delivered to the users meet the agreed time, cost, quantity and quality standards. It is, therefore, necessary to create a well-defined institutional structure that oversees contract performance. For this purpose, the requirements of monitoring and enforcement of the contract need to be fully understood and addressed prior to the execution of the concession agreement.

Oversight during implementation

- 3.1 For ensuring that the ultimate objective of a PPP project is achieved, implementation of the terms of the concession agreement needs to be monitored and enforced. While detailed guidelines have been laid down for award of PPP projects, the institutional mechanism for monitoring and enforcement of PPP contracts are yet to be specified. Such monitoring must address the two phases of a PPP contract viz. (a) construction phase; and (b) operations or O&M phase.
- 3.2 During the construction phase, project authorities are typically assisted by an Independent Engineer who inspects the project regularly and submits its reports. While this arrangement helps in monitoring the construction aspect, it may not address some of the other important obligations of the Concessionaire. Arrangements for regular monitoring during the Operations phase are also deficient, and even non-existent in many cases. Experience suggests that in many cases, the project authorities do not pay adequate attention to the monitoring and enforcement of the respective agreements with a view to safeguarding the public exchequer and the user interest. This is compounded by

the fact that the project teams often change after execution of the concession agreement and the new teams do not have sufficient time, knowledge or expertise to enforce compliance of contractual terms. As a result, user interests and the public exchequer are exposed to avoidable exploitation.

Nature and content of oversight

4.1 Among the contractual obligations specified in the respective concession agreements, the following deserve to be identified and enforced on priority:

- (i) satisfying the conditions precedent and milestones, as laid down in the concession agreement;
- (ii) construction of the project as per specified time-schedule and agreed standards;
- (iii) levy of user charges strictly within the limits specified in the concession agreement;
- (iv) protection of user interests by ensuring that performance standards, safety and other requirements are adhered to;
- (v) preventing misuse of public assets transferred to the concessionaire;
- (vi) preventing any leakage, diversion or mis-classification of government revenues;
- (vii) imposing and recovering penalties for breach of contract;
- (viii) operating the escrow account in accordance with the terms of the concession agreement;
- (ix) effective communication and exchange of information for monitoring and enforcement of obligations;
- (x) placing all relevant information relating to user and performance standards in public domain;
- (xi) overseeing the redressal of user grievances; and
- (xii) supervision of the functioning of the Independent Engineer with a view to ensuring that it is discharging all its duties.

Concession Agreements

5.1 Planning Commission has published several Model Concession Agreements (MCAs) with the objective of specifying an appropriate balance of risks and obligations and also for establishing a faster rollout of PPP projects in a fair and transparent manner. The framework that has been evolved in the MCAs is comprehensive and conforms to internationally accepted principles and best practices. In sectors that do not have duly approved MCAs, the project-specific concession agreements should adopt similar provisions. Some of the provisions in the Model Concession Agreement, which help improve project monitoring and dissemination of information, are illustrated below.

Role of the Independent Engineer

5.2 In all the MCAs, the role of contract supervision is discharged by the Independent Engineer. Its functions include review, inspection and monitoring of construction works, examining the designs and drawings for their conformity with the concession agreement and conducting tests and issuing completion certificates during the construction period. During the operations period, the Independent Engineer is expected to monitor compliance with the performance and maintenance standards. The Independent Engineer is expected to identify delays and lapses that require action on part of the government for enforcing the terms of the agreement.

5.3 The role of Independent Engineer is mainly restricted to technical matters. Issues relating to legal, financial, real estate, revenue and other incidental matters do not typically fall in the domain of the Independent Engineer. It would, therefore, be necessary for project authorities to monitor these aspects.

Dissemination of Information

5.4 Infrastructure projects provide public goods and services. As such, the project documents have a direct bearing on public and user interests. The MCAs, therefore, require all the project documents to be placed in public domain.

5.5 In addition to the above, the project authorities should also disseminate information relating to compliance with agreed performance standards so that the users are aware of the compliance of agreed standards for which they are paying

user charges. Once the data flow builds up, the project authorities may also get the performance rated by independent agencies and place it on their website.

Guidelines for Monitoring of PPP projects

- 6.1 These guidelines should be followed for monitoring all Public Private Partnership (PPP) projects which are based on a concession agreement between a Government or statutory entity on the one side and a private sector company on the other side, for delivering an infrastructure service on payment of user charges, tariffs or annuity from the government. These Guidelines may also be adopted for PPP projects in social sectors where similar monitoring and enforcement is considered necessary.
- 6.2 The Guidelines shall apply to all PPP projects sponsored by Central Government Ministries and statutory authorities. The proposed mechanism should also be followed for State projects that seek Viability Gap Funding from the Central Government.

Institutional Framework

- 7.1 As the PPP programme develops across sectors, a mechanism to monitor and enforce implementation of the agreed terms and delivery of services would need to be institutionalised. The mechanism should be capable of ensuring that the project authority and the concessionaire carry out their obligations in accordance with the respective concession agreement with a view to safeguarding the user interests and the public exchequer. It should also be ensured that the medium and long-term objectives are clearly identified and pursued.
- 7.2 A two-tier mechanism for monitoring the performance of PPP projects should be adopted as under:
 - (i) **PPP Projects Monitoring Unit (PPP PMU)** at the project authority level; and
 - (ii) **PPP Performance Review Unit (PPP PRU)** at the Ministry or State Government level, as the case may be.

- 7.3 The PPP PMU and PPP PRU should be involved in the respective projects as early as possible, preferably at the award stage itself. The above structure is in addition to the Independent Engineer who is expected to function independently and provide inspection reports for further action by the project authority and the concessionaire.

PPP Project Monitoring Unit

- 7.4 A PPP Project Monitoring Unit (PPP PMU) should be created at the project level for monitoring each PPP project. The PMU should be created at the level of the project authority or the government department which has granted the concession. The PMU should have sufficient capacity, resources and skills to oversee and monitor implementation of the PPP contract assigned to it. It may hire consultants to provide the requisite assistance as necessary. Where a number of projects are being executed, the project authority may choose to club 2-3 projects under a single PMU. Monitoring by PMU should, *inter alia*, cover the following aspects to be summarised in a monthly ‘**PPP Project Monitoring Report**’ which should be submitted to the PPP Performance Review Unit within 15 days of the close of the relevant month:

- (a) Compliance of the conditions precedent and achievement of financial close within the period specified in the concession agreement;
- (b) adherence to the time lines and other obligations specified in the concession agreement;
- (c) streamlining of, and adherence to, the reporting procedures between the concessionaire and the project authority, which may also include an MIS;
- (d) assessment of performance against laid down standards;
- (e) remedial measures and action plan for curing defaults, especially when performance standards are not fulfilled ;
- (f) imposition of penalties in the event of default;
- (g) levy and collection of user charges based on approved principles;
- (h) progress of on-going disputes and arbitration proceedings, if any; and
- (i) compliance with the instructions of the project authority or Independent Engineer, as the case may be.

- 7.5 At the beginning of each financial year, the PPP PMU, with the approval of PPP PRU, should finalise a format in which it shall submit its monthly report for each project. The format should be carefully prepared to include all the obligations of the concessionaire and the project authority, as specified in the concession agreement. It should serve as a check-list for ensuring that the provisions of the concession agreement are being complied with, in letter and spirit.
- 7.6 The Monthly Report should clearly bring out the compliance of the concessionaire and the project authority with respect to each and every item included in the aforesaid format and the concession agreement. The Monthly Report should also contain a summary which should highlight the items where a default has occurred or is likely to occur. The proposed action for rectifying the default should also be included in the summary. The intention should be to ensure that both the parties, public and private, perform their respective obligations in accordance with the concession agreement.
- 7.7 The PPP PMU should be manned by at least three officers, of which, at least one should be from the finance discipline. The head of the PPP PMU should be an officer of, at least, the rank of a Director/Deputy Secretary/Superintendent Engineer. The other two personnel could either be officers or consultants. It should be ensured that the personnel of PPP PMU spend at least two days at the project site during every two months and must interact with user representatives during such visits.
- 7.8 As an indicative norm, each PPP PMU may oversee two or three PPP projects with an aggregate project cost not exceeding Rs. 2,500 crore. In case of a large project, the PMU should only look after a single project. The respective Ministries may establish their own norms keeping in view the size and complexity of their projects.

PPP Performance Review Unit

- 7.9 A Performance Review Unit (PPP PRU), headed by an officer not below the rank of Joint Secretary should be set up at the level of the Central Ministry / State Government/ statutory entity for reviewing the monitoring of all PPP projects

within its jurisdiction. In case a PPP cell exists in the respective Ministry/Department, it could be suitably strengthened for serving as the PRU. In case the PPP PRU is to review a number of PPP projects, it should preferably have a dedicated team with no other functions. The PRU may also hire consultants as necessary.

7.10 The PPP PRU should review the PPP Projects Monitoring Report submitted by the different PMUs and oversee or initiate action for rectifying any defaults or lapses. The PRU should also prepare quarterly reports on the status of the PPPs. These reports should have particular focus on any non-compliance relating to the provisions of the relevant contract, especially in terms of the standards of performance or loss to the public exchequer and the users. It should clearly indicate the steps taken or required to be taken by the project authority in accordance with the provisions of the relevant contract. The PRU will submit its quarterly report to the competent authority. The quarterly report should include:

- (a) a compliance report regarding implementation of the various PPP projects as per the provisions of the respective contracts;
- (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; and
- (d) matters affecting the interests of the public exchequer in relation to the expenditures and revenues arising from the PPP project.

7.11 The PPP Performance Review Unit should cause to be conducted an evaluation of the project performance including a social audit, wherever applicable, once every two years.

7.12 The respective Ministries should send a quarterly compliance report to the Planning Commission with a copy to the Ministry of Finance. Planning Commission, in consultation with the Ministry of Finance, will prepare a summary of these reports, along with the recommendations relating to further action/ improvements, which would be placed before the Cabinet Committee on Infrastructure (CCI) once every quarter for the next two years.

Reporting Formats

- 8.1 An illustrative format of a PPP PMU monthly report to PPP PRU, based on the MCA for National Highway projects, may be seen at Annex –I. Format for Exception Reports by PPP PRU to competent authority is placed at Annex-II. These are only indicative in nature for the purpose of guidance and would have to be evolved for each project separately.

Sanction of Manpower

- 9.1 Central Ministries/ authorities dealing with a large number of PPP projects may consider obtaining sanction for additional manpower for manning the PPP PMUs and the PPP PRUs.

Conclusion

- 10.1 PPPs are long-term commitments by the concessionaires and project authorities. Their successful delivery will depend entirely on the performance of their respective obligations by the concessionaire and the authority. A sound and robust contract will fail to meet the desired objectives if it is not managed and monitored effectively. Moreover, documentation of the relevant communications, follow-actions and decisions relating to contract execution are critical to the delivery of these agreements since they help to ensure the accountability of the entire process. Inadequate attention to timely and appropriate action can not only compromise government and user interests, it can also give rise to disputes and claims in arbitration proceedings and courts of law.
- 10.2 The process of performance monitoring needs to be dynamic and under constant review because project circumstances undergo a change over time due to the long duration of PPP contracts. The above guidelines provide the mechanism by which this objective can be achieved.

Annexes

Statement – I

Summary Sheet of the PPP PMU Report

(Based on MCA of National Highways)

Project:**Period:**

Issues requiring action by Project Authority:	Action taken by PMU	Action taken by the Authority
1. Timelines not met by the concessionaire (i) (ii) 2. Timelines not met by the Authority (i) (ii) 3. Performance Standards not met by the concessionaire (i) (ii) 4. Default in payments by the concessionaire/Authority (i) (ii) 5. Other issues which may lead to default on the part of concessionaire (i) (ii) 6. Other issues which may lead to default on the part of Authority (i) (ii)		

<p>7. Issues under arbitration/litigation (i) (ii)</p> <p>8. Potential issues for arbitration/litigation (i) (ii)</p> <p>9. Brief comment on the progress and performance of the project</p> <p>10. Suggestions, if any:</p>		
--	--	--

Statement – II

Obligations of the Authority during Construction Period

(Based on MCA of National Highways)

Sl. No.	Obligations of the Project Authority	Is any action required to be taken (Yes/No)	If yes, provide details of action taken
1.	Satisfied the Conditions Precedent (Cl. 4.1.2): a) Provided to the Concessionaire the Right of Way to the Site b) Issued the Fee Notification c) Provided for the Concessionaire the Right of Way to **** d) Procured approval of Railway Authorities to construct road over bridges / under bridges at level crossings e) Procured all Applicable Permits relating to environmental protection and conservation of the site		
2.	Granted to the concessionaire the authority to regulate traffic on the Project Highway (Cl. 6.1.2)		
3.	Maintaining the Project Highway during Development Period (Cl. 6.2)		
4.	Preventing construction of any competing road (Cl. 6.3)		
5.	Invoking Performance Security for Concessionaire Default (Cl. 9.2)		
6.	Termination for non-replenishment of Performance Security (Cl. 9.2)		
7.	Release of Performance Security (Cl. 9.3)		

8.	Granting leave and license rights to the Concessionaire (Cl. 10.2.2)		
9.	Preparing inventory of the Site (Cl. 10.3.1)		
10.	Payment of Damages for delay in granting Right of Way (Cl. 10.3.4)		
11.	Acquisition of real estate (Cl. 10.8)		
12.	Recovery of Damages for failure to achieve milestone (Cl. 12.4.2)		
13.	Termination for failure to complete four-laning within the specified period (Cl. 12.4.3)		
14.	Recovery of Damages for failure to complete six-laning (Cl. 12.5.2)		
15.	Has the monthly report from IE been acted upon (Cl. 13.2)		
16.	Suspension of Construction Works (Cl. 13.5.1)		
17.	Viewing the video recording and taking action, if necessary (Cl. 13.6)		
18.	Issue of Completion Certificate by IE (Cl. 14.2)		
19.	Recovery of Damages for delay in COD (Cl. 12.4.2)		
20.	Response of the Authority to any Change of Scope notice (Cl. 16.1.2)		
21.	Issue of Change of Scope notice to the concessionaire (Cl. 16.2.3)		
22.	Release of advance payment for Change of Scope (Cl. 16.3.1)		
23.	Reimbursement of costs arising out of Change of Scope orders (Cl. 16.3.2)		
24.	Recovery of sums saved from works not completed (Cl. 16.6.1)		
25.	Appointing a Safety Consultant (Cl. 18.1.2)		

26.	Setting up of Safety Fund (Cl. 18.2)		
27.	Appointing an Independent Engineer (Cl. 23.1)		
28.	Recovery of Damages for failure to achieve financial close (Cl. 24.1.1)		
29.	Appropriating/returning Bid Security upon failure to achieve Financial Close (Cl. 24.2.2)		
30.	Disbursing Grant (Cls. 25.2 and 25.3)		
31.	Is Escrow Account in order (Cl. 31.1)		
32.	Issuing notice for a Force Majeure Event (Cls. 34.5.1 and 34.5.2)		
33.	Extending Financial Close in the event of Force Majeure event (Cl. 34.6.1)		
34.	Taking action for Force Majeure after Appointed Date (Cl. 34.6.2)		
35.	Allocation of costs arising out of Force Majeure (Cl. 34.7)		
36.	Informing concessionaire regarding intention to terminate (Cl. 34.8)		
37.	Termination Payment for Force Majeure (Cl. 34.9)		
38.	Action taken for being in material default (Cls. 35.2 and 35.3)		
39.	Compensating for Additional Tollway/ Competing Road (Cl. 35.4)		
40.	Suspension upon occurrence of Concessionaire Default (Cl. 36.1)		
41.	Informing concessionaire of intent to terminate (Cl. 34.8)		
42.	Informing Lenders of the intent to Terminate (Cl. 37.1.3)		
43.	Termination Payment for Authority Default (Cls. 37.3.2 and 37.3.3)		
44.	Exercising rights and obligations upon Termination (Cl. 37.4)		

45.	Issuing a Divestment Certificate (Cl. 38.3)		
46.	Adjusting the costs arising out of Change in Law (Cl. 41.1)		
47.	Complying with General Indemnity requirements (Cl. 42.1)		
48.	Amicably resolving disputes (Cl. 44.1 and 44.2)		
49.	Any other observation, complaint or suggestion		

Statement -III
Obligations of the Authority during Operations Period

(Based on MCA of National Highways)

Sl. No.	Obligations of the Project Authority	Is any action required to be taken (Yes/No)	If yes, provide details of action taken
1.	Preventing construction of Competing Road (Cl. 6.3)		
2.	Invoking Performance Security for Concessionaire Default (Cl. 9.2)		
3.	Termination for non-replenishment of Performance Security (Cl. 9.2)		
4.	Release of Performance Security (Cl. 9.3).		
5.	Recovery of Damages for failure to complete six-laning (Cl. 12.5.2)		
6.	Has the monthly report from IE been acted upon (Cl. 13.2)		
7.	Recovery of Damages for default on Punch List items (Cl. 14.4)		
8	Response of the Authority to any Change of Scope notice (Cl. 16.1.2)		
9.	Issue of Change of Scope notice to the concessionaire (Cl. 16.2.3)		
10.	Release of advance payment for Change of Scope (Cl. 16.3.1)		
11	Reimbursement of costs arising out of Change of Scope orders (Cl. 16.3.2)		
12.	Recovery of Damages for failure to rectify defects set forth in the Maintenance Requirements (Cl. 17.8.1)		
13.	Recovery of amount spent by Authority on remedial works (Cl. 17.9.1)		

14.	Procuring that no barriers are erected on Project Highway (Cl. 17.14)		
15.	Appointing a Safety Consultant (Cl. 18.1.2)		
16.	Setting up of Safety Fund (Cl. 18.2)		
17.	Appointing an Independent Engineer (Cl. 23.1)		
18.	Is Escrow Account in order (Cl. 31.1)		
19.	Issuing notice for Force Majeure Event (Cls. 34.5.1 and 34.5.2)		
20.	Taking action for Force Majeure after Appointed Date (Cl. 34.6.2)		
21.	Allocation of costs arising out of Force Majeure (Cl. 34.7)		
22.	Informing concessionaire regarding intention to terminate (Cl. 34.8)		
23.	Termination Payment for Force Majeure (Cl. 34.9)		
24.	Action taken for being in material default (Cls. 35.2 and 35.3)		
25.	Compensating for Additional Tollway/ Competing Road (Cl. 35.4)		
26.	Suspension upon occurrence of Concessionaire Default (Cl. 36.1)		
27.	Informing concessionaire of intent to terminate (Cl. 34.8)		
28.	Informing Lenders of the intent to Terminate (Cl. 37.1.3)		
29.	Termination Payment for a Concessionaire Default (Cl. 37.3.1)		
30.	Termination Payment for Authority Default (Cls. 37.3.2 and 37.3.3)		
31.	Exercising rights and obligations upon Termination (Cl. 37.4)		
32.	Issuing a Divestment Certificate (Cl. 38.3)		
33.	Retaining reserves in the Escrow Account (Cl. 39.2)		

34.	Adjusting the costs arising out of Change in Law (Cl. 41.1)		
35.	Complying with General Indemnity requirements (Cl. 42.1)		
36.	Amicably resolving disputes (Cl. 44.1 and 44.2)		
37.	Is the complaint redressal mechanism working satisfactorily (Cl. 46.2)		
38.	Any other observation, complaint or suggestion		

Statement -IV
Obligations of the Concessionaire during Construction Period

(Based on MCA of National Highways)

Sl. No.	Obligations of the Concessionaire	Is any action required to be taken (Yes/No)	If yes, provide details of action taken
1.	Provided Performance Security (Article 9)		
2.	Satisfied Conditions Precedent (Cl. 4.1.3) (a) Executed and procured execution of the Escrow Agreement (b) Executed and procured execution of the Substitution Agreement (c) Procured all the Applicable Permits specified in Schedule-E (d) Delivered copies of Financing Agreements to the Authority (e) Delivered 3 copies of Financial Package and Financial Model (f) Delivered from the Consortium Members confirmation of representations and warranties (g) Delivered a legal opinion with respect to the authority of the Concessionaire		
3.	Obtaining and keeping in force the Applicable Permits (Cl. 5.1.4 (f))		
4.	Procuring proprietary rights, licences, permissions, etc. (Cl. 5.1.4 (b)).		
5.	Maintaining harmony and good industrial relations (Cl. 5.1.4 (d)).		
6.	Submitted drafts of Project Agreements to the Authority (Cl. 5.2.2)		
7.	Obtaining consent for amendments to Project Agreements (Cl. 5.2)		

8	Obtaining approval for Change in Ownership (Cl. 5.3)		
9.	Obtaining prior consent for any business other than Project (Cl.5.6)		
10.	Providing in each Project Agreement the right of Authority to step in (Cl. 5.2.4)		
11	Employed foreign nationals in accordance with Cl. 5.4		
12.	Replenishing Performance Security in event of appropriation (Cl. 9.2)		
13.	Remedying Concessionaire Default within Cure Period (Cl. 9.2)		
14.	Keeping the Highway open to traffic at all times (Cl. 10.2.3)		
15.	Submitting its detailed design, methodology, time schedule, etc (Cl. 12.1 (a))		
16.	Performing all other necessary acts, deeds and things before construction (Cl. 12.1 (c))		
17.	Maintaining existing lanes of the Project Highway (Cl. 12.2)		
18.	Submitting a complete set of ‘as-built’ drawings (Cl. 12.3 (g))		
19.	Completing four – laning within the specified period (Cl. 12.4.1)		
20.	Paying damages for failure to achieve any milestone (Cl. 12.4.2)		
21.	Submitting monthly progress reports (Cl. 13.1)		
22.	Rectifying defects pointed out in IE’s monthly report (Cl. 13.2)		
23.	Carrying out tests and furnishing reports (Cl. 13.3.1)		
24.	Communicating steps taken to expedite progress (Cl. 13.4)		
25.	Crediting the balance to the Safety Fund (Cl. 16.3.2)		
26.	Evolving Maintenance Manual in consultation with IE (Cl. 17.3)		
27.	Not displaying advertisements on the Site (Cl. 17.15)		

28.	Constructing and handing over Traffic Aid Posts (Cl. 20.2)		
29.	Setting up and operationalising Medical Aid Posts (Cl. 21.1)		
30.	Achieving Financial Close within the specified period (Cl. 24.1.1)		
31.	Paying Damages for delay in Financial Close (Cl. 24.1.1)		
32.	Providing 3 copies of Financial Package and Financial Model (Cl. 24.1.2)		
33.	Depositing specified inflows and receipts in the Escrow Account (Cl. 31.2)		
34.	Payments from Escrow Account as per specified order (Cl. 31.3.1)		
35.	Appropriation from Escrow Account after Termination (Cl. 31.4.1)		
36.	Effecting and maintaining insurance cover (Cls. 32.1 and 32.2)		
37.	Depositing and using the proceeds from insurance claims (Cl. 32.7)		
38.	Maintaining books of accounts (Cl. 33.1)		
39.	Appointing Statutory Auditors (Cl. 33.2.1)		
40.	Issuing notice for Force Majeure Event (Cl.s 34.5.1 and 34.5.2)		
41.	Informing the Authority regarding intent to Terminate (Cl. 34.8)		
42.	Compensating the Authority for material default (Cl. 35.1)		
43.	Complying with the Divestment Requirements (Cl. 38.1)		
44.	Paying all costs incidental to divestment (Cl. 38.5)		
45.	Paying to the Authority the benefits arising out of Change in Law (Cl. 41.2)		
46.	Complying with General Indemnity requirements (Cls. 42.1 and 42.2)		
47.	Allowing free access to the Site at all times to the Authority (Cl. 43.2)		

48.	Amicably resolving disputes (Cl. 44.1 and 44.2)		
49.	Availability of Specified Documents and documents for inspection (Cls. 45.1 and 45.2)		
50.	Maintaining public relations office and Complaints Register (Cl. 46.1)		
51.	Inspecting Complaints Register every day and taking prompt and reasonable action (Cl. 46.2)		
52.	Any other observation, complaint or suggestion		

Statement -V

Obligations of the Concessionaire during Operations Period

(Based on MCA of National Highways)

Sl. No.	Obligation of the Concessionaire	Is any action required to be taken (Yes/No)	If yes, provide details of action taken
1.	Obtaining and keeping in force the Applicable Permits (Cl. 5.1.4 (f))		
2.	Procuring proprietary rights, licences, permissions, etc (Cl. 5.1.4 (b)).		
3.	Maintaining harmony and good industrial relations (Cl. 5.1.4 (d)).		
4.	Obtaining consent for amendments to Project Agreements (Cl. 5.2)		
5.	Obtaining approval for selection of O & M Contractor (Cl. 5.2.5)		
6.	Obtaining approval for Change in Ownership (Cl. 5.3)		
7.	Obtaining prior consent for interest in business other the Project (Cl.5.6)		
8.	Employed foreign nationals in accordance with Cl. 5.4		
9.	Replenishing the Performance Security (Cl. 9.2)		
10.	Remedying Concessionaire Default within Cure Period (Cl. 9.2)		
11.	Submitting monthly progress reports (Cl. 13.1)		
12.	Rectifying defects pointed out in the IE's monthly report (Cl. 13.2)		
13.	Carrying out tests and furnishing reports (Cl. 13.3.1)		
14.	Adhering to the following obligations (Cl. 17.1.1):		

	<ul style="list-style-type: none"> a) Permitting safe, smooth and uninterrupted flow of traffic b) Collecting and appropriating the Fee c) Minimizing disruption to traffic d) Carrying out periodic preventive maintenance e) Undertaking routine maintenance including prompt repairs f) Undertaking major maintenance g) Preventing unauthorized use of the Project Highway; h) Preventing encroachments on the Project Highway; including the Site; i) Protection of the environment j) Operation and maintenance of all communication, control and administrative systems k) Maintaining a public relations unit l) Complying with Safety Requirements 		
15.	Compliance with the maintenance requirements (Cl. 17.2)		
16.	Submitting the Maintenance Programme (Cl. 17.4.1)		
17.	Ensuring safe conditions for users (Cl. 17.5)		
18.	Not displaying advertisements on the Site (Cl. 17.15)		
19.	Complying with the Safety Requirements (Cl. 18.1.1)		
20.	Submitting Monthly status report (Cl. 19.1)		
21.	Reporting on the O&M Inspection Report or the test results (Cl. 19.4.1)		

22.	Furnishing the Monthly Fee Statement (Cl. 19.5)		
23.	Operationalising the Medical Aid Posts (Cl. 21.1)		
24.	Furnishing weekly data on vehicles census (Cl. 22.1)		
25.	Installing and operating a computer system (Cl. 22.4)		
26.	Paying the Additional Concession Fee (Cls. 26.2 and 26.4)		
27.	Depositing into the Safety Fund, the Fee exceeding the Traffic Cap (Cl. 27.6.2)		
28.	Displaying the Fee Rates (Cl. 27.12.1)		
29.	Repaying Revenue shortfall loan (Cl. 28.2)		
30.	Not offering discounts on opening of an Additional Tollway (Cl. 30.3)		
31.	Depositing the specified inflows and receipts in the Escrow Account (Cl. 31.2)		
32.	Payments from Escrow Account as per specified order (Cl. 31.3.1)		
33.	Appropriation from Escrow Account after Termination (Cl. 31.4.1)		
34.	Effecting and maintaining insurance cover (Cls. 32.1 and 32.2)		
35.	Depositing and using the proceeds from insurance claims (Cl. 32.7)		
36.	Maintaining books of accounts (Cl. 33.1)		
37.	Submitting the Balance sheet, profit and loss account, etc. (Cl. 33.1.1)		
38.	Submitting unaudited financial results for each quarter (Cl. 33.1.2)		
39.	Providing information on traffic count, Fee received, etc. (Cl. 33.1.3)		

40.	Appointing Statutory Auditors (Cl. 33.2.1)		
41	Issue notice for Force Majeure Event (Cl.s 34.5.1 and 34.5.2)		
42.	Informing the Authority regarding intent to Terminate (Cl. 34.8)		
43.	Compensating the Authority for material default (Cl. 35.1)		
44.	Complying with the Divestment Requirements (Cl. 38.1)		
45.	Complying with Maintenance Requirements prior to Termination (Cl. 38.2)		
46.	Paying all costs incidental to divestment (Cl. 38.5)		
47.	Responsibility for all defects after Termination (Cl. 39.1)		
48.	Paying to the Authority the benefits arising out of Change in Law (Cl. 41.2)		
49.	Complying with General Indemnity requirements (Cl. 42.1 and 42.2)		
50.	Allowing free access to the Site at all times to the Authority (Cl. 43.2)		
51.	Amicably resolving disputes (Cl. 44.1 and 44.2)		
52.	Availability of Specified Documents for inspection (Cl. 45.1 and 45.2)		
53.	Maintaining public relations office and Complaints Register (Cl. 46.1)		
54.	Inspecting Complaints Register and taking prompt action (Cl. 46.2)		
55.	Any other observation, complaint or suggestion		

	a stretch of 1 km		
(v)	Rutting exceeding 10 mm in more than 2% of road surface in a stretch of 1 km (measured with 3 m straight edge)	- 30 days	
(vi)	Bleeding/skidding	- 7 days	
(vii)	Ravelling/Stripping of bitumen surface exceeding 10 sq m	- 15 days	
(viii)	Damage to pavement edges exceeding 10 cm	- 15 days	
(ix)	Removal of debris	- 6 hours	
	(b) Hard/earth shoulders, side slopes, drains and culverts		
(i)	Variation by more than 2% in the prescribed slope of camber/cross fall	- 30 days	
(ii)	Edge drop at shoulders exceeding 40 mm	- 7 days	
(iii)	Variation by more than 15% in the prescribed side (embankment) slopes	- 30 days	
(iv)	Rain cuts/gullies in slope	- 7 days	
(v)	Damage to or silting of culverts and side drains during and immediately preceding the rainy season	- 7 days	

	<p>(vi) Desilting of drains in urban/semi-urban areas - 48 hours</p> <p>(c) Road side furniture including road signs and pavement marking</p> <p>(i) Damage to shape or position; poor visibility or loss of retro-reflectivity - 48 hours</p> <p>(d) Street lighting and telecom (ATMS)</p> <p>(i) Any major failure of the system - 24 hours</p> <p>(ii) Faults and minor failures - 8 hours</p> <p>(e) Trees and plantation</p> <p>(i) Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs - 24 hours</p> <p>(ii) Deterioration in health of trees and bushes - Timely watering and treatment</p> <p>(iii) Replacement of trees and bushes - 90 days</p> <p>(iv) Removal of vegetation affecting sight line and road structures - 15 days</p> <p>(f) Rest areas</p>		
--	---	--	--

	<ul style="list-style-type: none"> (i) Cleaning of toilets - Every 4 hours (ii) Defects in electrical, water and sanitary installations - 24 hours (g) Toll plaza[s] (i) Failure of toll collection equipment or lighting - 8 hours (ii) Damage to toll plaza - 7 days (h) Other Project Facilities and Approach roads (i) Damage or deterioration in Approach Roads, - 15 days -[pedestrian facilities, truck lay-bys, bus-bays, bus- shelters, cattle crossings, Traffic Aid Posts, Medical Aid Posts and other works] <p>BRIDGES</p> <ul style="list-style-type: none"> (a) Superstructure of bridges (i) Cracks Temporary measures - within 48 hours Permanent measures - within 45 days (ii) Spalling/scaling - 15 days 		
--	--	--	--

	<p>(b) Foundations of bridges</p> <p>(i) Scouring and/or cavitation - 15 days</p> <p>(c) Piers, abutments, return walls and wing walls of bridges</p> <p>(i) Cracks and damages including settlement and tilting - 30 days</p> <p>(d) Bearings (metallic) of bridges</p> <p>(i) Deformation - 15 days</p> <p>(e) Joints in bridges</p> <p>(i) Loosening and malfunctioning of joints - 15 days</p> <p>(f) Other items relating to bridges</p> <p>(i) Deforming of pads in elastomeric bearings - 7 days</p> <p>(ii) Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes - 3 days</p> <p>(iii) Damage or deterioration in parapets and handrails - 3 days</p> <p>(iv) Rain-cuts or erosion of banks of the side slopes of approaches - 15 days</p> <p>(v) Damage to wearing coat - 15 days</p>		
--	---	--	--

	(vi) Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds	- 30 days		
	(vii) Growth of vegetation affecting the structure or obstructing the waterway	- 15 days		

Exception Report by PRU to the Competent Authority

Project:

Period:

Subject	Action taken by PMU/Authority	Action taken by PRU
<p>I. Exception Report on non-compliance</p> <ul style="list-style-type: none">1. Timelines not met by the concessionaire<ul style="list-style-type: none">(a)(b)2. Timelines not met by the Authority<ul style="list-style-type: none">(a)(b)3. Performance Standards/KPI not met by the concessionaire<ul style="list-style-type: none">(a)(b)4. Default in payments by the concessionaire/Authority<ul style="list-style-type: none">(a)(b)5. Other issues which may lead to default on the part of concessionaire<ul style="list-style-type: none">(a)(b)6. Other issues which may lead to default on the part of Authority<ul style="list-style-type: none">(a)(b)		

<p>7. Issues under arbitration/litigation and their status (a) (b)</p> <p>8. Potential issues for arbitration/litigation (a) (b)</p> <p>II. Report on matters affecting public exchequer</p> <p>1. Any additional project costs or expenditure affecting the Authority (a) (b)</p> <p>2. Levy or collection of any user charges having adverse impact on Users or Authority (a) (b)</p> <p>3. Any other financial matter having adverse bearing on Authority or Users (a) (b)</p> <p>III. General remarks about the progress and performance of the project</p> <p>IV. Suggestions, if any.</p>		
--	--	--