TAMIL NADU INFRASTRUCTURE DEVELOPMENT BOARD REGULATIONS, 2013.

FRAMING OF TAMIL NADU INFRASTRUCTURE DEVELOPMENT BOARD REGULATIONS, 2013—UNDER THE TAMIL NADU INFRASTRUCTURE DEVELOPMENT ACT, 2012 (ACT 22 OF 2012).

1. <u>Short title and commencement</u> (1) These regulations shall be called Tamil Nadu Infrastructure Development Board Regulations, 2013.

(2) They shall come into force on the 4^{th} February 2013.

2. <u>Application</u> These Regulations shall apply to all Projects to which the Act and the Rules apply.

3. <u>Definitions</u> In these regulations, unless the context otherwise requires

(a) "**Act**" means the Tamil Nadu Infrastructure Development Act, 2012 (Tamil Nadu Act 22 of 2012);

(b) "**Achievement and Exception Report**" means the report submitted to the Government or the Board or both by the procuring entity in accordance with regulation 18;

(c) "**Board**" means the Tamil Nadu Infrastructure Development Board;

(d) "**CEO**" means Chief Executive Officer of the Board;

(e) "**Project Concept Note**" means a note containing preliminary information about the proposed Project prepared in accordance with regulation 7;

(f) "**Public Sector Comparator**" is the estimate of the hypothetical risk-adjusted life cycle cost of a project if it were to be financed, owned and implemented solely by the Government or a public agency;

(g) "**Request for Expression of Interest (REOI)**" shall have the same meaning as under the Tamil Nadu Transparency in Tenders (Public-Private Partnership) Rules, 2012;

(h) "**Request for Qualification**" shall have the same meaning as under the Tamil Nadu Transparency in Tenders (Public-Private Partnership) Rules, 2012;

(i) "**Rules**" means The Tamil Nadu Infrastructure Development Rules, 2012;

(j) "**Transaction Advisor**" means an independent consultant who advises on the process of structuring of a project, its tendering and assists the public agency or sponsoring agency upto the stage of award of the tender or signing of the concession agreement as the case may be;

(k) "**Value for Money Assessment"** (VFM) means the quantitative and qualitative assessment of the costs and benefits associated with a project undertaken in accordance with regulation 11. VFM is used to establish whether implementing a project in the Public-Private Partnership mode is an economically optimal proposition for the Government or the public agency. VFM takes into account direct and indirect project execution costs, financing costs, transaction costs, cost of asset transfer on project completion, project monitoring costs and a cost estimation of the possible risks thereof;

4. <u>Meetings of the Board</u> (1) The Board shall meet at least twice a year, or as and when desired by the Chairperson of the Board.

(2) Intimation for the meeting shall be sent to all the members at least seven days prior to the date of the meeting along with the agenda for the meeting. The agenda for the meeting shall also be circulated through the electronic mails.

(3) Urgent meetings can be held at shorter notice of less than 7 days with the concurrence of all the members.

(4) For urgent subjects which cannot wait till the next meeting of the Board, the process of circulating the agenda papers to the members may be resorted to and it shall be ensured that the agenda is circulated to all the members available in India and the subject is placed in the next meeting for confirmation of the circular resolution.

(5) The quorum for the Board shall be one third or two whichever is higher.

(6) The Minutes of the meeting shall be prepared by the Chief Executive Officer and approved by the Chairperson and confirmed in the next meeting of the Board.

5. <u>Meetings of the Executive Committee</u> (1) The Executive Committee shall meet at least once in a quarter, or as and when desired by the Chairman of the Executive Committee.

(2) Intimation for the meeting shall be sent to all the members at least seven days prior to the date of the meeting along with the agenda for the meeting. The agenda for the meeting shall also be circulated through the electronic mails.

(3) Urgent meetings may be held at shorter notice of less than seven days with the concurrence of all the members.

(4) Urgent subjects which cannot wait till the next meeting of the Executive Committee, the process of circulating the agenda papers to the members may be resorted to and it shall be ensured that the agenda is circulated to all the members available in India.

(5) The minutes of the meeting shall be prepared by the Chief Executive Officer and approved by the Chief Secretary as Chairperson of the Executive Committee and confirmed in the next meeting of the Executive Committee.

(6) The quorum for the Executive Committee shall be one third or two whichever is higher.

6. <u>Panel of Transaction Advisors and other Consultants</u> (1) The Board may prepare panels of Transaction Advisors and other categories of consultants by following the prequalification process prescribed under Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998);

(2) The panel for each category of consultants shall be valid for a period of two years and shall ordinarily consist of at least six members.

(3) When a procuring entity wishes to engage the services of a Transaction Advisor or of any category of consultant for which the Board has prepared a panel, financial quotations for the specified scope of work may be called for from the transaction advisors or consultants on the panel and select the lowest tenderer.

7. <u>Project Concept Note</u> (1) In pursuance to section 14 of the Act, the views of the public agency under sub-section (1) or the proposal under sub-section (2) shall be submitted to the Board in the form of a Project Concept Note, containing the details as indicated in the format prescribed in Appendix I.

(2) The public agency shall also submit along with the Project Concept Note, the Feasibility Study, if already completed and available of the proposed project.

(3) On receipt of the Project Concept Note, the Chief Executive Officer shall first make a determination whether the project is within the ambit of the Board and if not, he shall return the project proposal to the public agency.

(4) The Chief Executive Officer shall, where no feasibility study has been submitted by the public agency or if he finds that the feasibility study submitted is not adequate for the purposes of the Act and the Regulations, cause a feasibility study to be prepared either by directing the public agency to do so or by engaging the services of a consultant or expert.

(5) The Chief Executive Officer shall based on the Project Concept Note and the feasibility study prepare a note for the consideration of the Board.

(6) The said note prepared shall also indicate the possible extent and form of public financial support a project may require when it is proposed to be implemented in the Public-Private Partnership mode.

8. <u>Feasibility Study</u> (1) In addition to the information specified in clause (f) of section 2 of the Act, the feasibility study shall include the following information:

(a) A market assessment to establish the need for and define the geographical, technical economic and social scope of the project including an options analysis and a demand and supply projection.

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

Provided that for projects proposed for Public-Private Partnership mode of implementation, technological inputs and key performance indicators would be specified, and an indicative project cost shall be provided.

(c) A legal analysis to assess the impact of the applicable laws and regulations;

(d) A preliminary social and environmental feasibility analysis, including the environmental and social impact assessments and associated mitigations;

(e) Project structuring in terms of the recommended mode of implementation and, in case the Public-Private Partnership mode is proposed, the appropriate form of concession agreement under Schedule II of the Act;

(f) A financial analysis incorporating the projected revenue structure, financial viability and affordability of the Project for the Public Agency, the Government and the end users, and assessing the need for public financial support;

(g) An analysis of the costs and benefits of the project with a calculation of financial Internal Rate of Return (IRR) to capture the financial costs and benefits and an Economic Rate of Return (ERR) to capture the Socio-Economic benefits and costs.

(h) A risk assessment of the Project, involving the identification of risks and in case of Public-Private Partnership mode of implementation, the allocation of risks to the party that is best able to manage each risk. The Feasibility Study may also include a quantification of the potential Contingent Liabilities that the public agency or Government or both may have to incur over the project cycle;

(i) An assessment of the suitability of the project to be undertaken as a Public-Private Partnership;

(j) A Value for Money assessment, for evaluating the suitability for implementing a project on a Public-Private Partnership basis;

(k) The project implementation schedule, including an outline of the proposed procurement and award process through to technical and financial close, an outline of the construction schedule and target operating date.

(2) The Feasibility Study shall be in the format prescribed in Appendix II.

9. Value for Money Assessment (1) The Value for Money Assessment shall be part of the Feasibility Study of any Project proposed for implementation through the Public-Private Partnership mode and for other projects where the Board is of the view that such an assessment is necessary.

(2) The primary purpose of a Value for Money assessment shall be to determine the most appropriate delivery mode for a project and to assist in the evaluation of tenders received from the private sector Participants in case of projects implemented in the Public-Private Partnership mode.

(3) The Value for Money assessment shall be conducted over different stages of the project including the project appraisal and approval stage, evaluation of the tenders and before the final award of tender stage and after the award of the tender to the successful tenderer.

(4) In the feasibility study, the Value for Money assessment shall in the first instance draw up a public sector comparator and an estimate of the cost of delivering the project through the Public-Private Partnership mode after specifying clear outputs from the project, accounting for competitive neutrality adjustment and costing of transferable risks and retained risks and applying such further guidelines as the Board may issue from time to time, thereby enabling a comparison of the risk adjusted lifecycle costs of implementing the project directly by the public agency versus the Public-Private Partnership mode of implementation.

(5) At the project appraisal, pre-tender stage, the value for money assessment will be indicative and a decision of whether or not to go choose the

Public-Private Partnership mode of implementation would have to be supported by a consideration of this assessment as also other qualitative factors described in Regulation 8.

(6) The Public Sector Comparator shall be updated before the tender stage of a Public-Private Partnership project and the updated public sector comparator may be used as guidance for the following purposes:

(a) For a comparison with the tenders;

(b) Negotiation with the lowest tenderer; and

(c) To take a final decision before awarding the tender whether to implement the project in the Public-Private Partnership mode or not.

(7) The Value for Money assessment shall be updated after the issue of the letter of award to the successful tenderer to enable the benchmarking and monitoring of Value for Money delivery by the private partner.

10. <u>Recommendation of the Board</u> (1) On considering the note prepared under clause (5) of regulation 7, the project concept note and the feasibility study, the Board shall make a determination as to the feasibility and the desirability of implementing the project on account of its socio-economic benefits, including the priority of such implementation vis a vis other projects under its consideration.

(2) The Board shall satisfy itself that all options to increase efficiency in project scoping have been considered, the same level of service delivery needs cannot be met with a reduced scope and scale of the Project and that the capital and operating costs have been optimized and are reasonable;

(3) Upon deciding that the project is feasible and is of priority, the Board shall, subject to the provisions of regulation 11, make a determination as to whether the public-private partnership mode would be appropriate.

(4) The Board shall then recommend to Government that those projects which are to be implemented in the public sector mode, those which may be implemented in either mode, and those which are to be implemented in the public-private partnership mode. Where the Board recommends the public-private partnership mode of implementation, it shall also indicate the appropriate form of concession agreement to be entered into from out of those in Schedule II of the Act.

(5) In cases where the Board recommends implementation through the Public-Private Partnership mode, it shall also indicate the possible extent and form of public financial support that the project may require in accordance with rule 12:

Provided that in cases where the public financial support proposed is from the Central Government, the sponsoring agency may be advised to approach the appropriate agency of the Central Government.

(6) The Board shall also indicate in its recommendations the public agency which is to implement the project in the public sector mode, or which is to be designated as the sponsoring agency for Public-Private Partnership mode of implementation.

11. <u>Factors to be considered by the Board in determining whether to</u>

recommend Public-Private Partnership implementation (1) The Board shall examine the Project Concept Note and the Feasibility Study and recommend implementation through the Public-Private Partnership on a consideration of the following factors:-

(a) The project is of sufficient scale and with major capital investment over a long-term and the lifecycle costs and revenues of the Project establish the sustainability of the Public-Private Partnership mode throughout the concession period.

(b) The value for money assessment at the pre-tender stage indicates that the Public-Private Partnership mode of implementation is likely to achieve a net present value higher than public sector comparator.

(c) The risk profile of the project is appropriate for transfer of some risks to a potential private partner.

(d) The allocation of risks between the public agency and the private party implementing the project is appropriate and implementation through the Public-Private Partnership mode does not pass on abnormally high risk to the public agency either in terms of direct financial commitments or indirect or contingent liabilities.

(e) An independent assessment of the market demand, including a comprehensive justification of major assumptions and key findings, has been made and the project revenues are considered realistic and viable for the potential private partner;

(f) The project has measurable outputs which can be specified and a performance based agreement can be entered into;

(g) Managerial efficiency can be achieved through better asset utilization or through more efficient design to meet performance specifications;

(h) A competitive market exists and the use of a competitive process would encourage private entities to develop innovative means of service delivery while meeting the Public Agency's cost objectives.

(i) User charges projected, if any, are affordable and acceptable to users and would be socially and economically acceptable.

(j) The tariffs setting and revision framework is predictable and transparent.

(k) The direct financial commitments of the public agency or the Government or both have been quantified and reasonably estimated for the entire contract duration and are within the budgetary limits of the Government or the Public Agency, as the case may be.

(l) The Contingent Liabilities, including guarantees (Corporate or Government), legal obligations and commitments and implicit obligations including the need to continuously provide a public service, if any, have been assessed and are acceptable to the Public Agency.

12. Project Implementation by Public Sector Mode (1) On receipt of Government’s decision to implement a project in the public sector mode, if the

Board is of the view that the information available regarding the technical, economic, social or financial parameters of the project are adequate to proceed with the implementation of the project, it shall inform the designated public agency and direct them to commence implementation forthwith.

(2) In cases where the Board is of the view that the information is inadequate it may cause further detailed project study covering all or any specific aspects of the project for which further information is required and upon being satisfied with the further information provided, it will direct the designated public agency to commence implementation forthwith.

(3) For the purposes of section 15 of the Act, implementation of the project will be deemed to have commenced from the date the first tender notice covering a significant proportion of the project is published:

Provided that if even after three successive tender notices, there is inadequate response and it has not been possible to finalize the tenders, the Board may decide that the public agency has not commenced implementation of the project and proceed to act under sub-section (2) of section 15 of the Act.

13. Publishing the Details of the proposed Public-Private Partnership project for Objections and Suggestions: (1) The CEO shall, within five days of receipt of the Government's direction to implement a project in the Public-Private Partnership mode, intimate the Sponsoring Agency.

(2) The Sponsoring Agency shall within fifteen days of receipt of the intimation, publish the details of the proposed project in the format prescribed in Appendix III on the Notice Board of their respective offices and their offices near the project site and on the official website of the Government of Tamil Nadu, the sponsoring agency's website, where available and the Board's website.

(3) The notice shall invite objections and suggestions with regard to the proposed project development for a period of thirty days, which in special cases may be reduced to fifteen days with the approval of the Board.

(4) Based on the objections and suggestions received, the Sponsoring Agency shall submit a report, in the format prescribed in Appendix IV to the Board, within a period of thirty days from the last date of receipt of objections and suggestions, inter alia responding to the objections and suggestions and proposing such modifications in the project as it deems appropriate.

14. Project Structuring and Final Approval for Public-Private Partnership Projects—(1) Based on the report from the Sponsoring Agency under regulation 13, if the Board is of the view that the information available regarding the technical, economic, social or financial parameters of the project are adequate to proceed with Public-Private Partnership procurement, it will direct the Executive Committee to finalize the scope and structure of the project.

(2) In cases where the Board is of the view that the information is inadequate it may cause further detailed project study covering all or any specific aspects of the project for which further information is required and upon being satisfied with the further information provided, it will direct the Executive Committee to finalize the scope and structure of the project based on such further information.

(3) In finalizing the scope and structure of the project, the Executive

Committee shall subject to the provisions of rule 12 of the Tamil Nadu Infrastructure Development Rules 2012 either approve of its own accord or secure the Board's specific approval for the extent and form of public financial support for the project.

(4) In cases where the public financial support is to be state support, the possible extent and form of state support proposed shall be reported to the Government forthwith, including whether such state support is proposed to be a tender criterion.

(5) In cases where the public financial support is to be support from the Central Government, the concerned administrative department and the sponsoring agency shall be advised to directly approach the agencies concerned in the Central Government.

(6) If the Board concludes that project cannot be implemented in the Public-Private Partnership mode, it may recommend to Government that the project may be implemented in the public sector mode or dropped.

15. Approval of Tender Documents and Concession Agreement (1) The Board may prescribe standard tender documents for adoption for different types of projects and such standard documents may be used for procurement wherever available.

(2) Until such standard tender documents are prescribed, the public agency or sponsoring agency, as the case may be, shall submit the draft tender documents for the prior approval of the Board.

(3) In the case of Public-Private Partnership projects, the sponsoring agency may where applicable follow the model tender documents and model concession agreements for Public-Private Partnership projects prepared by the Union Planning Commission as the base, with such modifications as may be necessary.

(4) All tender documents including draft concession agreements for Public-Private Partnership projects shall require the prior approval of the Board and any substantive changes made during pre-tender consultations with prospective tenderers shall also be approved by the Board.

(5) The sponsoring agency may with the prior concurrence of the Board issue a Request for Expression of Interest at any time and even the project scope and structure are finalized by the Board under section 17 of the Act.

(6) The sponsoring agency shall issue the Request for Quotations only after the project scope and structure have been finalized by the Board under section 17 of the Act and the financial support from Tamil Nadu Infrastructure Development Fund, if any, is approved under rule 12 of the Tamil Nadu Infrastructure Development Rules.

(7) The sponsoring agency shall forward to the Board, the Concession Agreement to be signed with the tenderer whose tender has been accepted with a certificate that no changes have been affected in the final Draft Concession Agreement which formed part of the Request for Proposal (RFP).

16. Appointment of Project Management Facility (PMF) (1) For projects of large size and complexity, at any time after recommending a project for implementation under section 14 of the Act, the Board may recommend to the Government the constitution of a Project Management Facility under section 20 of the Act.

(2) The Project Management Facility shall have a Project Manager, with atleast ten years of experience in managing projects, as the head of the facility and at least three members who to assist the Project Manager with operations; project finances; and legal issues.

(3) The Project Management Facility shall perform the functions detailed in Appendix V.

17. Appointment of Project Managers—(1) In cases where no Project Management Facility is created for a project, the public agency implementing a project in the public sector mode shall designate a Project Manager and a sponsoring agency implementing a Public-Private Partnership Project shall designate a Project Manager under section 19 of the Act.

(2) Any person designated as Project Manager under sub-regulation (1) shall be either a senior Government official or have ten years of project management experience, and shall discharge the functions specified in Appendix V.

18. Project Monitoring (1) The Project Management Facility or the Project Manager shall submit to the Board through the sponsoring agency an Achievement and Exception Report to Board on a quarterly basis, within thirty days of the end of the quarter.

(2) The Project Management Facility or the Project Manager shall also submit such other periodic reports on the status of project implementation, including in terms of time, cost, safety and other factors in the construction phase and the status of achievement of key performance indicators and other contractual, social, economic and financial indicators in the operational phase, in such formats and with such frequency as the Board by general or special instructions direct.

(3) The Chief Executive Officer shall cause to be laid before the Board and the Executive Committee at each of their regular meetings, a summary of the most recent reports mentioned under sub-regulations 5 and 6 on the status of implementation of the projects.

(4) In case of Public-Private Partnership Projects, the Project Management Facility or Project Manager shall also be responsible for certifying the eligibility of the Concessionaire for release, where applicable, of state support in accordance with the terms of the concession agreement.

(5) The Board or the Executive Committee may suo-moto or on a request from a public agency take up a special review of any project including for the purpose of identifying and resolving any bottlenecks in the implementation of a project.

(6) The Project Management Facility or Project Manager, as the case may be, shall continue to be in existence until the project is completed and the project asset is transferred to the public agency or Government or until such time as the Government may determine.

(7) The Project Management Facility or Project Manager, as the case may be, shall be responsible on behalf of the public agency or sponsoring agency for the maintenance of project documentation, including what is contained in the Project Management Plan, in such format, structure or manner as the Board may from time to time prescribe.

19. Project Management Plan—(1) The Public agency or Sponsoring Agency shall cause to be prepared by the Project Management Facility or the Project Manager, following the principles contained in Appendix V, a Project Management Plan at a stage no later the signing of the Contract or the Concession Agreement, which shall:

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

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

(c) manage differences through proactive relationship management;

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

(e) resolve disputes in an expeditious manner, with minimal impact on service delivery.

(2) The Project Management Plan shall also serve as a repository of basic project related documentation and shall include:

(a) The Contract or Concession Agreement and its schedules;

(b) All financing agreements as well as financial models, where applicable;

(c) The names, roles and contact details of key individuals of both parties;

(d) Implementation plan during development, construction, operations and exit phases;

(e) Performance management plan;

(f) Risk management plan;

(g) Financial and contract administration plan;

(h) Relationship management and Contingency plan; and

(i) Contract Termination and Handover plan.

20. <u>Treatment of variation</u> (1) Where a Contract or a Concession Agreement includes provisions for amendments consequent on variations, it shall be the responsibility of the Project Manager or PMF to:

(a) Ensure party proposing an amendment consequent upon variation justifies it with adequate evidence and related costs;

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

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

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

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

(2) The Sponsoring Agency shall obtain approval for all amendments to terms of the Concession Agreement from the Board.

21. <u>Exit strategy for continued service delivery after exit</u> (1) The Public Agency or Sponsoring Agency shall ensure that the Contract or Concession Agreement provides for a hand back and exit strategy for the Project.

(2) Such an exit strategy shall include:

(a) Review of options to ensure service continuity;

(b) Testing and valuation of assets;

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

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

(3) The Project Management Facility shall be responsible for implementation of exit strategy at the end of contract term.

(4) After the exit of the Private Sector Participant, the Sponsoring Agency may decide to continue the delivery of the service through a fresh operations and maintenance contract.

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APPENDIX - I

FORMAT FOR PROJECT CONCEPT NOTE

(see regulation 7)

Sl. No.	***Parameters.***	***Response.***
1.	**General**	
1.1	Name of the Project	
1.2	Project Id number (if already assigned)	
1.3	Sector	
1.4	Implementing Agency, Government Department	
1.5	Previous phases, if any	
1.6	Project development in public or Public-Private Partnership mode	
2.	**Project Description**	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Target population	
2.4	Project land available with Government	Yes/ No
2.5	Land acquisition required, if any.	Yes/ No
2.6	Rehabilitation and Resettlement, if any	Yes/ No
2.7	Would the project require a transaction advisor?	Yes/ No
2.8	Basic design / components developed	Yes/ No
2.9	Preliminary studies undertaken	Yes/ No
2.10	Feasibility studies undertaken	Yes/ No
2.11	Statutory clearances required	Yes/ No
2.12	Statutory clearances obtained	Yes/ No
2.13	Project implementation schedule prepared	Yes/ No
2.14	Assessment on possible risks and challenges	Yes/ No
2.15	REOI floated?	Yes/ No
2.16	Will the project have future phases?	Yes/ No
2.17	Does the project have linkages with similar projects?	Yes/ No

Sl. No.	***Parameters.***	***Response.***
2.18	Whether similar projects undertaken previously?	Yes/ No
2.19	Would the project generate direct employment?	Yes/ No
2.20	Would the project generate in-direct employment?	Yes/ No
2.21	Does the project have the capacity to kick-off continuous and comprehensive development of the location?	Yes/ No
3.	**Brief Project Description**	
3.1	The engineering and technical aspects of the Project	
3.2	The operational aspects of the Project	
3.3	Preliminary assessment of all likely technical and operational risks	
3.4	Socio-Economic assessment and analysis	
3.5	Environmental assessment scoping	
4	**Financials**	
4.1	Estimated total project cost with break-up / phasing of investment Sources of financing: (if available)	
4.2	**For Public Sector Mode**	
a	Internal resources of Public Agency	
b	Budgetary support	
c	Support from any other agency	
d	Project Based Loans	
4.3	**For Public-Private Partnership Mode**	
a	Resources to be raised by the Concessionaire	
b	Equity	
c	Debt	
d	Public Financial Support the project may need	Rs.
e	Form of Public Financial Support-please detail (Refer Rule)	
f	Source of Public Financial Support	Yes / No
g	Govt. of India VGF – is project eligible	Yes / No

Sl. No.	***Parameters.***	***Response.***
h	State support envisaged and reason?	Yes / No
i	Extent and Sources of State Support Sponsoring Agency's internal resources Other budgetary resources TNIDF	
j	Form of state support (please specify)	
k	Is it an annuity-based project?	Yes/ No
l	Financial IRR	
m	Economic RR	
4.4	Will the project have predetermined user charges/ tariffs	Yes/ No
4.5	The cost recovery/income generation assumptions of the Project	
4.6	Likely interest of private entities in the Project	
4.7	Possible financial risks	
4.8	Identification of likely economic benefits generated by the Project	
5	**Next Steps:**	
5.1	Further steps needed to complete project preparation (Please detail: preparation of detailed project study; other market/financial/legal studies; preparation of tender documents including RFQ, RFP, DCA etc.)	
5.2	Resources required to complete the project preparation process (Please detail: need to engage consultants including transaction advisors)	
5.3	Is financing needed from TN Project Preparation Fund? If so has an application been made?	
5.4	Parties responsible for completing next steps	
5.5	Roles and responsibilities of involved parties	
5.6	Time frame required for completing project preparation	

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APPENDIX - II

FORMAT FOR FEASIBILITY STUDY REPORT

(see regulation 8)

1. Executive Summary

Part A: Feasibility Assessment

2. Project background
3. Strategic needs assessment, demand assessment and project scoping
4. Service standard — output and services
5. Market assessment
6. Technical feasibility
7. Financial feasibility including IRR and ERR
8. Environment impact
9. Legal framework
10. Stakeholder consultation findings and public interest evaluation
11. Public sector comparator, value for money assessment and recommendations
12. Conclusion and recommendations on feasibility assessment

Part B: Structuring

13. Risk assessment
14. Key commercial principles and payment mechanisms
15. Evaluation criteria for selection of the private entity (preliminary indication)
16. Implementation plan(preliminary indication)
17. Project resource requirement
18. Conclusion and recommendations on structuring

Appendixes
(other supporting documents)

The content of the Feasibility Study report is discussed in detail below

1. Executive summary:

This summary should provide of the following information —

(a) Current service provision, if applicable and future requirements;

(b) A summary of the full list of options;

(c) A summary of the options selection procedure and the options chosen for detailed examination;

(d) A summary of the comparative findings and justification for the preferred option; and

(e) Highlights of the implementation plan.

Part A: Feasibility Assessment

2. Project Background:

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

3. Strategic Needs Assessment, Demand Assessment and Project Scoping:

This section will analyse current and future needs. An analysis of the user's needs should be included. The following issues should be addressed:

(a) Existing or envisioned service gaps;

(b) Key stakeholders and their requirements; and

(c) Consultation plan with key stakeholders to ensure that the Project remains relevant.

Assessment of demand should also be included in this section. Project scoping Component should determine and define the scope of the Project, outlining the services to be delivered.

4. Service Standard — Output and Services:

This section will translate the needs identified in the previous step into specific outputs. The following issues should be addressed:

(a) Impact of the proposed Project on the service gaps identified above and overall objectives the Project aims to achieve;

(b) Outputs expected from the Project, stated in measurable and quantifiable terms as far as possible;

(c) Support service outputs (the outputs that are not the key drivers of the Projects, but have potential to enhance the Project's value for money); and

(d) Relevance of the Project to the Contracting Authority's long-term strategic goals and overall national development plan.

5. Market Assessment:

Once the project outputs have been specified, assessment of the market potential can commence. The purpose of market assessment study is to assist the Contracting Authority in deciding how to design, and deliver the Public-Private Partnership Project. The study may address the following elements:

(a) Description of the industry;

(b) Current market analysis (current offerings, market players and their capability and appetite);

(c) Competition (alternative service and product offerings);

(d) Anticipated future market potential;

(e) Potential market players and sources of revenues; and

(f) Demand projections.

6. Technical Feasibility:

This component details how the Project can be delivered (i.e., outline technical solution). The study should address the following elements:

(a) Field surveys of the project site, which may include (depending on the Project) mapping, topographical and geotechnical surveys;

(b) A preliminary technical design of facilities required to provide the project outputs. This should consider alternative design options, taking into account uncertainty in the demand projections and other site-related uncertainties;

(c) Materials and other inputs requirements;

(d) Alternatives (such as those involving usage of existing assets for the Project, rather than creating new ones; or achieving the desired outputs by some means other than the proposed solution) and their assessment in relation to the possibility of achieving the targets of the Project; and

(e) Capital expenditure cost assessment and operating and maintenance cost assessment based on the components of the preliminary technical design.

7. Financial Feasibility:

This component provides an estimate of project costs based on recommended technical solution and identifies possible financing solutions. The study should address the following elements:

(a) Project costs (initial and replacement capex, cost of upgrades, opex);

(b) Start-up capital:

(c) Sources of financing;

(d) Potential revenues;

(e) Estimated returns; and

(f) Consulting costs.

8. Environment Impact:

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

9. Legal Framework:

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

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

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

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

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

10. Stakeholder consultation findings and public interest evaluation:

This component should state the findings of the consultation process with the various stakeholders including but not limited to:

(a) Users;

(b) Developers;

(c) Community participants;

(d) Citizens likely to be affected;

(e) Financers; and

(f) Other relevant Government authorities.

11. The Public Sector Comparator (PSC), Value for Money and recommendations:

This section should state the reference project and detail the computation of the Public Sector Comparator and resultant Value for Money for the Public Agency.

12. Conclusion and Recommendations on Feasibility Assessment:

This component should detail the key conclusions and recommendations on the Feasibility Assessment.

Part B: Structuring:

13. Risk Assessment:

This section should identify all material risks associated with the Project, specifying the external and project development risks for the Contracting Authority, the project risks to be allocated to the private entity in the case of Public-Private Partnership s and those to be retained by the Contracting Authority.

14. Key Commercial Principles including Payment Mechanisms:

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

15. Evaluation Criteria for selection of the private entity:

This section should explain the options regarding the evaluation criteria for selection of the private entity. This would be preliminary and subject to finalization of the RFP.

16. Implementation Plan:

This section should detail the activities and timelines during the Project development period. It should also state the person or entity responsible for each activity.

17. Project Resource Requirement:

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

18. Conclusion and Recommendations on Structuring

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

Appendixes
(other supporting documents)

Any supporting documents should be included in the section like detailed projected financial statements, detailed environment impact assessment study, detailed technical report, detailed review of legal framework, etc.

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APPENDIX - III

FORMAT FOR PUBLISHING THE DETAILS OF PUBLIC-PRIVATE PARTNERSHIP PROJECT

(see regulation 13)

Sl. No.	***Parameters.***	***Response.***
1.	**General**	
1.1	TNIDB Project ID	
1.2	Name of the Project	
1.3	Sector	
1.4	Sponsoring Agency	
1.5	Location of the project	
1.6	Previous phases, if any	
2.	**Project Description**	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Estimated total project cost.	Rs.
2.4	Target population	
2.5	Direct employment likely to be generated by the project	
2.6	Indirect employment likely to be generated by the project	
2.7	Direct economic benefits by the Project	
2.8	In-direct economic benefits of the project	
2.9	Project land available with Government	
2.10	Land acquisition required, if any.	
2.11	Rehabilitation and Resettlement, if any	
2.12	Will the project have future phases?	

APPENDIX - IV

REPORT FORMAT FOR OBJECTIONS AND SUGGESTIONS

(see regulation 13)

Sl. No.	***Parameters.***	***Response.***
1.	**General**	
1.1	TNIDB Project ID	
1.2	Name of the Project	
1.3	Sector	
1.4	Implementing Agency, Government Department	
1.5	Mode of implementation	Public/ PPP
1.6	Previous phases, if any	
2.	**Project Description**	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Estimated total project cost.	Rs.
2.4	Target population	
2.5	Project land available with Government	
2.6	Land acquisition required, if any.	
2.7	Rehabilitation and Resettlement, if any	
2.8	Will the project has future phases?	
2.9	Information on similar projects undertaken previously?	
2.10	Direct employment likely to be generated by the project	
2.11	Indirect employment likely to be generated by the project	
2.12	Direct economic benefits by the Project	
2.13	In-direct economic benefits of the project	
3	**Details of Publication**	
3.1	Date of publication of Public Notice	
3.2	Number of days provided for receiving suggestions and objections	
3.3	Mode of publication of public notice	
3.4	Number of objections received	

Sl. No.	***Parameters.***	***Response.***
3.5	Number of suggestions received	
4	**Suggestions and Objections**	
4.1a	Summary of Suggestion / Objection (for each major suggestion/objection)	
b	Views of the Sponsoring Agency	
c	Probable change in cost of project	
d	Perception of risk involved	
e	Social acceptability of the risk perceived	
f	Suggestions from the Agency and Remarks	

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APPENDIX - V

PROJECT MANAGEMENT PRINCIPLES

(see regulation 16)

1. Functions of Project Management Facility or Project Manager before signing of Concession Agreement/ Contract:- The PMF or Project Manager shall perform the following functions after the Letter of Award (LOA) has been issued to the Lowest Tenderer:

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

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

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

(d) Obtain all documentation required from Private agency and monitor fulfillment of all obligations of the Private agency relating to approvals, consents and licenses to sign the Concession Agreement/Contract; and

(e) Procure all approvals required for the Sponsoring Agency or Public agency as the case may be for the signing of the Concession Agreement or contract.

2. Fulfillment of Conditions Precedent:- (a) The Project Management Facility shall be responsible for monitoring the fulfilment of Condition Precedents for Sponsoring Agency and the Private agency in the Concession Agreement or Contract.

(b) The Project Management Facility shall submit a periodic report to the Sponsoring Agency on the progress of the fulfillment of individual Conditions Precedent. The periodicity of such reports would be defined by the Sponsoring Agency depending on the size and complexity of the Public-Private Partnership Project.

(c) The Project Management Facility shall notify the Sponsoring Agency of any potential failure or delay in the fulfillment of Conditions Precedent and shall recommend any actions for correction or avoidance, as the case maybe, of such potential failure or delay.

(d) The Project Management Facility shall periodically review the activities undertaken and progress made by the Concessionaire or Contractor for the fulfillment of the Condition Precedents for Concessionaire or Contractor in the Concession Agreement or contract. The Project Management Facility shall report the result of such review in the report referred to in paragraph (2) of this article. The Project Management Facility shall also notify the Sponsoring Agency or Public Agency of any potential failure or delay on the part of the Concessionaire or contractor in fulfillment of Conditions Precedent, and recommend actions to be taken by the Concessionaire for correction or avoidance, as the case maybe, of such potential failure or delay.

3. Responsibility during Construction Period:- (a) Once the construction starts the PMF shall be responsible for monitoring the progress of construction as per the schedule and contract terms. For this it will:

(i) Monitor progress by the Sponsoring Agency or Public Agency of providing remaining land as per project schedule;

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

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

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

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

(d) Invoke contractual terms in case of non-compliance by the Private agency.

(e) Report on a monthly basis on project status to the State Government.

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

4. Responsibility during Operations Period:- (a) Once the construction is completed the PMF shall, undertake periodic site-visits, to monitor the operations and maintenance of the Public-Private Partnership Project as per the contract terms. This shall include:

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

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

(iii) Reviewing the progress and performance indicators;

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

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

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

(c) Send monthly reporting on the status of the Public-Private Partnership Project to the Sponsoring agency or public agency and to the TNIDB.

5. Performance Management:- (a) To achieve high standards of performance from the Project including a Public-Private Partnership Project, it is vital to continuously monitor its service delivery and compliance to performance standards. Therefore, the Public Agency or Sponsoring Agency, through the PMF, shall put in place requisite performance monitoring mechanisms.

(b) The PMF shall prepare, prior to signing of the Concession Agreement or contract, a performance management plan as part of Project Management Plan, such a plan shall, clearly define performance requirements for each stage in the project lifecycle, which shall include:

(i) Development requirements covering the standards of civil and engineering works;

(ii) Commissioning requirements covering testing requirements prior to commissioning of Public-Private Partnership Project;

(iii) Service delivery requirements covering output requirements for efficient service delivery;

(iv) Handover requirements which shall include the specific standards and requirements of assets at the time of handover and project exit; and

(v) Effectively link the payment mechanism to performance standards.

(c) Monitor the fulfilment of performance standards are satisfied and any default is appropriately dealt as per the contract terms.

(d) Monitor that all payments are made and penalties are imposed within the timeframes specified in the concession agreement or contract.

(e) Ensure that performance is always assessed with respect to performance standards specified in the concession agreement or contract.

(f) Document clearly performance monitoring procedures and ensure a common understanding of processes within Project Management Facility.

(g) Prepare and circulate performance reports periodically to facilitate a shared understanding of delivery process, establish a system for collecting and documenting feedback on the Project and ensure trends in substandard service delivery are identified & documented.

6. Key Performance Indicators:- (a) Key Performance Indicators (KPI) for each of the performance requirements as defined in the concession agreement or contract, shall be periodically monitored by PMF. Such KPIs shall be:

(i) both qualitative and quantitative measures; and

(ii) a combination of the service quality, financial efficiency and process efficiency.

(b) The nature of specific indicators, frequency of their monitoring shall be in line with the nature and criticality of service delivery and the criticality of its impact on project lifecycle.

(c) The Sponsoring Agency or Public Agency, through the PMF, shall monitor performance through KPIs, wherein it shall, as part of performance management framework:

(i) Establish reporting and monitoring systems and procedures,

(ii) Define data collection methods & data sources,

(iii) Specify timeframes for reporting and monitoring of indicators, and

(iv) Assign responsibilities for reporting and monitoring activities.

(d) The Sponsoring Agency or Public Agency, through the PMF, particularly in long term Concession Agreements and contracts wherein performance standards for service delivery are likely to evolve over time, shall establish a system of continuous improvement in project service delivery. Herein, target indicators may be based on past performance with an incremental improvement envisaged so that principles of continuous improvement apply.

7. Risk Management:- (a) Based on the risks identified and allocated during the procurement and contracting phases, a response plan to risks materializing shall be prepared by the Procuring Entity. This shall be a set of possible escalations and actions to be made by the Sponsoring Agency for managing risks and responding to possible risk outcomes.

(b) This shall include a risk reporting, monitoring and control system for continuous reporting, monitoring and updating of risks allocated to either party throughout the project lifecycle. And also to establish procedures to be used by the Sponsoring Agency or Public Agency to deal with failure of the private party to manage the risk, such as penalties and other suitable measures, as also contingency procedures to restore service delivery.

8. Contingency Management:- (a) Many of the facilities and services under the Public-Private Partnership Projects will be of an essential nature and hence would require to be restored to citizens or users at the earliest possible and even in case of private party failure.

(b) Contingency planning is vital to a Public-Private Partnership Project, as it may not be possible to fully transfer responsibility for the risk of service delivery failure to the private party. Need for a contingency plan arises on account of possible service disruption or private party default. Wherein, contingency can be classified into:

(i) Disruption in service delivery not on account of private party default such as, force majeure events;

(ii) Disruption in service delivery on account of private party default on contract terms; and

(iii) Default by private party but no disruption in service delivery.

(c) In light of this Sponsoring Agency shall cause development of a Contingency Management Plan. It shall include the following:

(i) Business continuity plan, Its objective is to mitigate the impact of service delivery disruption on the key stake holders, i.e. contracting parties and end users. It shall include:

(a) Potential events that could disrupt service delivery;

(b) Immediate actions in response to such events;

(c) Priority and timeframes for restoring critical services;

(d) Service levels for each critical service;

(e) Identified resources for implementing the plan;

(f) Allocation of roles and responsibilities for response management;

(g) Information required to implement the plan;

(h) Stakeholder communication; and

(i) Periodic testing requirement, of the plan.

(ii) Step-in plan, allows the Procuring Entity, under exigent circumstances, to "step-in" and temporarily take control of project facilities to ensure continued service delivery, it shall include:

(a) Potential events that may trigger step in clause of contract;

(b) Contractual conditions to be satisfied before step in;

(c) Institutional roles & responsibilities in implementation of step in clause;

(d) Prior authorizations required prior to exercise of right;

(e) Obligations & liabilities incurred in exercising step in rights;

(f) Resources required to implement the plan;

(g) Communication to implement the step in plan; and

(h) Whether "step-out" is possible or feasible.

(iii) Default plan, to be implemented when default clause of the contract is invoked, it shall include:

(a) Potential events likely to lead to a default;

(b) Impact of default on service delivery;

(c) Time period before institution can act on the default;

(d) Contractual remedies and impact on service delivery;

(e) Institutional roles and responsibilities;

(f) Resources required to implement the plan; and

(g) Communication to implement the default plan.

(d) However due process should be observed in invoking these contractual provisions. Action should be taken keeping in mind the nature of relationship with the private party.

(e) The PMF shall be responsible for carrying out contingency management activities and monitoring implementation of the contingency plan.

9. Managing Relationship and Communication:- (a) It is essential that there exists mutual trust amidst contracting parties, through open communication and information sharing. On each side, the roles and responsibilities of respective Project Management Facility should be finalized, channels for communication should be clearly set out and communication should be consistent across levels and under-pinned by a culture of information sharing and prompt action.

(b) It is important to periodically review the relationship between contracting parties. The objective of such an exercise should be to identify any issues that may have arisen during the course of project execution and the resolution of which has had an impact on the relationship between contracting parties. Initiating steps to overcome any issues early on will help avoid any escalation of such issues into larger disputes.

(c) It is also important to conduct periodic one-to-one and group interactions between the project management facility's of the contracting parties as well as with the users and societal stakeholders of the project.

10. Dispute Resolution:- (a) Effective measure should be put in place through the contract to settle disputes between the contracting parties.

(b) Mutual discussions, wherein the parties to the agreement can come together to discuss a mutually agreeable settlement, is one of the most effective tools for dispute resolution in terms of management time, cost, range of possible solution and relationship management and thus it shall be the preferred method to resolve disputes.

(c) Thereafter, Sponsoring Agency or public agency shall follow the procedures specified in the Concession Agreement to resolve disputes between parties.

(d) It shall be the responsibility of Project Management Facility to ensure that the dispute resolution procedure laid down in contract is adhered to and informing contracting parties and all relevant stakeholders on dispute resolution progress.

11. Project Administration:- The Project Management Facility shall be responsible for project administration, supported by such resources as are required. It shall encompass the fulfilment of the set of activities mentioned herein to meet contractual requirements.

12. Financial Administration:- (a) Financial adminis-tration shall include implementation of the payment mechanism as defined in the contract and developed in the Project Management Plan. The Project Management Facility shall be responsible for fulfilling the activities related to financial administration listed herein.

(b) In case of availability based Public-Private Partnership Projects (Annuity), ensure timely payments by the authority as set out in the contract.

(c) In case of user fee based Public-Private Partnership Projects:

(i) Effective monitoring of revenues earned by the private operator and collection of revenue share or any other payments due to authority; and

(ii) Ensure timely disbursals of capital or revenue grants (if any) by the authority.

(d) In both types of Public-Private Partnership Projects, as applicable, the process would also involve:

(i) Imposition of penalties (including suspension of revenue collection rights);

(ii) Adjustments for inflation and other factors; and

(iii) Develop and implement reporting systems for the above.

(e) The PMF shall ensure that, payment mechanism links payments to achievement of performance standards set out in the contract, such that payment mechanism shall:

(i) Fully reflect actual service delivery;

(ii) Incorporate a system of penalties such as deductions based on severity of service failure; and

(iii) award penalty points for non-compliance, leading to contractual remedies taking affect in the event of repeated offence.

13. Information and knowledge management:-(a) The Project Management Facility shall be responsible for put in place effective mechanisms for information and knowledge management. It shall extend to, but not limited to responsibilities listed herein below:

(i) Identification of information resources;

(ii) Capturing, collating, classifying, storing and appropriate security of information;

(iii) Sharing of information to users, likely users and to those required under any law; and

(iv) Reviewing, maintaining and purging of information to meet contractual compliance requirement.

(b) To ensure continuous availability of project related knowledge and information through the project lifecycle, efficient information management would require, among others:

(i) Maintaining a document/information management system; and

(ii) Establishing necessary tools & processes such as policies & procedures for managing information, records & documents;

(c) Fostering an appropriate culture for adhering to specified policies & procedures and information/knowledge exchange at appropriate levels.

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