

# Public Private Partnerships vs. Engineering Procurement and Construction Contracts

Project Documentation

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# EPC – Turnkey Facility

- Contracts to undertake construction works on
  - Large Scale
  - Complex Infrastructure Projects

- Complex Design and Engineering Works
- Procurement of Specified Equipment and Machinery
- Construction and Delivery of Complete Facility

# Dominant Sectors

- Steel Plants
- Power Plants
- Petroleum and LNG Terminals
- Renewable Energy
- Refineries and Treatment Plants

# Why EPC?

- Guaranteed Price
- Guaranteed Timeline for Completion
- Specified Level of Performance
- Single Point of Responsibility
- Post-Commissioning Services
- Flexibility and Certainty
- Higher Supervision and Control

# Principal Elements of EPC Structure

- Cost, Time & Quality
- Single Point of Responsibility
- Fixed Completion Date
- Performance Specifications
- Monetary Liabilities for Delay/Defaults
- Cap on Liability
- Performance Guarantee
- Defect Liability

# Issues in Structure and Documentation

- Huge Monetary Liabilities, often amounting to losses.
- No Price Escalation Clause
- Risk Allocation
- Limited Claims to Additional Money
- Limited Control and Interference by Project Company during Construction

# What is PPP?

An arrangement between the public and private sectors with clear agreement for delivery of public infrastructure and/or public services.

The private sector contractors are long term providers of services combining:

- Design
- Build
- Finance
- Operation & Maintenance

To deliver services needed by public sector.

# Major PPP Projects in India

- Development of Hyderabad International Airport
- Kakinada deep Water Port, Andhra Pradesh
- Development of the Bangalore International Airport
- Thiruvananthapuram City road improvement project and Vizhingam International Container Transshipment Project, Kerala
- Four-Laning of Kalyani-Dum Dum Expressway in West Bengal
- DND Flyway connecting New Delhi and Noida

# Forms of PPP

- Build Operate & Transfer (BOT):
  - Build-Operate-Transfer (Annuity)
  - Build-Operate-Transfer (Toll)
- Design, Build, Finance, Operate & Transfer (DBFOT)

# Documentation Involved

- Shareholders' Agreement (For incorporation of Special Purpose Vehicle)
- Concession Agreement (between the Government Authority and the Private Party/Concessionaire)

# Special Purpose Vehicle (SPV)

- A company incorporated solely for the implementation of the project
- Enters into contracts with the Government and sub-contractors
- Develops, builds, maintains and operates the project
- Guarantee and secure cash flows
- Preferred in Project Finance

# Benefits of the PPP Approach

- Speedy, Efficient and Cost-effective delivery of Projects
- Higher Performance Incentives
- Better Value of Money
- Competition and Greater Construction Capacity
- Higher Accountability
- Better Risk Allocation
- Government Support

# Viability Gap Funding

Mechanism to provide grant of upto 40% of the estimated project cost to meet gaps for making a project commercially viable.

# Principal Elements of PPP Documentation

- Defined Timelines
  - Appointed Date: Financial Close & Performance Security
  - Grant of Right of Way
- Checks & Balances by Authority during Construction
- Operation & Maintenance
- Performance Specifications/Standards
- Liabilities for Delay/Default.

# Issues in Documentation

- Land Acquisition & grant of Right of Way
- Issues in Supervision, Checks and Balances
- Cost and/or Time Overrun
- Change in Law – Political or Judicial Intervention
- Change in Scope, Variations
- Force Majeure

# PPP vs. EPC

- Better Risk Allocation
- Higher Accountability of Private Party
- Speedy Infrastructure Development
- Higher Chances of Successful Completion
- Government Support
- Larger, more complex projects more viable in PPP
- No maintenance expenses on part of Government

# THANK YOU

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