Public Private Partnerships vs. Engineering Procurement and Construction Contracts

Project Documentation

Ravi Singhania
Managing Partner
Singhania & Partners LLP
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
- Thiruvanathapuram City road improvement project and Vizhingam International Container Transhipment 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

Ravi Singhania

B-92, Himalaya House,
23, K.G Marg, New Delhi-110001
T. (120) 4631000, F. (120) 4631001
E-MAIL- ravi.singhania@singhania.in