

Rajasthan Social Sector Viability Gap Funding Scheme

Preamble

1. Social sector, comprising of health, education, nutrition, water supply, weaker sections of society like SCs, STs and the like, needs government investments most. From an economic perspective, social sector has both public and private goods / services. It may however, be that most of the private goods in the sector being more of 'merit goods' on account of substantial positive externalities. There is, therefore, a powerful case for continued government investment in the social sector. However, over the years, it has also been demonstrated adequately that the delivery of social services improves considerably with the involvement of private sector and not-for-profit organizations. There is lot of evidence to believe that the non government is prepared to make investments and participate in both setting up social services facilities and also operating them sometimes for charity, sometimes as corporate social responsibility and sometimes even for profit, when the major advantage brought to the table is greater professional expertise, private-sector efficiency and greater accountability. However, this may sometimes require that the issue of viability gap be addressed.
2. Government of Rajasthan has experimented with a few initiatives in the social sector to involve private and not-for-profit organizations. These initiatives span education, health, nutrition, animal husbandry and technical & higher education. Different approaches have been adopted for addressing the viability gap. In some cases government has provided land free of cost (setting up polytechnics/ engineering colleges in districts or blocks not having such institutions). In other cases, land and building has been offered (women polytechnics). In another type of model, operational expenditure grants equal or less than the normative expenditure in operating such services have been provided (PHCs / CHCs in rural areas, cooking of mid-day meal in centralized kitchens). In some other cases, payments linked to outputs are being tried (artificial insemination in animal husbandry).
3. These initiatives have been taken in episodic manner, and for specific cases. There is now a need for bringing out an over-arching framework for establishing a viability gap funding scheme, which can provide for a menu of

viability gap funding options and establishes a process for accessing the facility across the departments. Hence, this scheme.

4. This Policy intends to address viability gap for meeting two kinds of service provision in the social sector:
 - I. Establishment of new social service facilities i.e. expansion of existing social sector facilities like opening of colleges, hospitals, hostels, etc;
 - II. Operation and management of existing government facilities like PHCs, Veterinary hospitals, agriculture extension work etc.

Scheme

1. Short Title and Extent

- (i) This scheme will be called the Rajasthan Social Sector Viability Gap Funding (RSS-VGF) Scheme for promoting Public Private Partnerships (PPPs) in the social sector.
- (ii) All government departments, autonomous organizations under the Government of Rajasthan and local bodies of the state shall be eligible to get social sector infrastructure and services financed under the Scheme, through their respective budgets.
- (iii) The scheme shall come into force with immediate effect.

2. Definitions

In this scheme, unless the context otherwise requires:

'Empowered Committee' means a committee set up under clause 6 for approving proposals for viability gap funding;

'Private Organization' includes companies, cooperative or registered societies, partnership firms, not-for-profit organisations and individuals engaged in providing any goods or service;

'Not for Profit Organization' means organizations which are not set up for earning profits and includes a company, society, trust or self help group;

'Project Term' means the duration of the contract or concession agreement for the PPP project;

'Public Private Partnership (PPP) Project' means a project based on a contract or concession agreement, between a Government or an autonomous organization of the government or a local body on the one side and a Private Organization or 'Not for Profit Organizations' on the other side, for setting up

or taking over an existing social sector service with or without payment of user charges;

'Social Sector Facility or Service' means a facility or service in the health, education, veterinary, agriculture extension and other similar sectors as defined by government from time to time.

'Viability Gap Funding or Grant' includes

- a) Capital grants in the form of grants, or loans free of interest or at concessional rates;
- b) Capital grants in the form of land or building or both;
- c) Grants to bridge the gap of revenue expenditure and revenue receipts at a rate determined on the basis of tender for a specified period.

3. Eligibility

In order to be eligible for funding under this Scheme, a PPP project should meet the following criteria:

- a) It should be a project in the social sector. Following is an illustrative list of sectors classified as social sector for the purposes of this Scheme:
 - (1) General Education, including elementary, secondary and higher education and non formal / literacy;
 - (2) Technical Education;
 - (3) Sports and Youth Services;
 - (4) Art and Culture;
 - (5) Medical and Public Health
 - (6) Family Welfare;
 - (7) Water Supply and Sanitation;
 - (8) Urban and Rural Development;
 - (9) Information and Publicity;
 - (10) Welfare of Scheduled Castes, Scheduled Tribes and Other Backward Classes;
 - (11) Welfare of Women and Children;
 - (12) Labour and Employment;
 - (13) Social Security and Welfare;
 - (14) Nutrition;
 - (15) Agriculture Extension;
 - (16) Soil and Water Conservation;
 - (17) Animal Husbandry;
 - (18) Forestry and Wild Life;

- (19) Minor Irrigation;
- (20) Non-conventional sources of Energy;
Other sectors could be added with the approval of the committee.
- b) The project will be either for expansion of public services or handing over operations and management of existing services delivered by a government department, office, autonomous organization of the government or a local body.
- c) Proposal relating to expansion of services should have been included as a new item in the budget of the Department.

4. Preparation of Projects for Viability Gap Funding

- (i) Proposals for Viability Gap Funding shall be prepared by the concerned Department / Autonomous organization / Local Body. Proposals of autonomous organizations / local bodies would be vetted by concerned Administrative Department. Concerned Department will be responsible for submitting the project for viability gap funding to the Secretariat of the Empowered Committees. The proposal should have:
 - a) Details of rationale, efficiency improvement, and other benefits of undertaking the project in PPP mode;
 - b) Details of capital investments, recurring expenditure and expected rate of user charges / recovery under two alternative scenario—if the service is delivered under government department and if the service is provided under the PPP mode;
 - c) Expected viability gap in the PPP mode, both non-recurring and recurring;
 - d) Options and proposals for meeting the viability gap;
- (ii) Proposal for viability gap will be submitted in the proforma for submission of the proposal at Annex 1.

5. Viability Gap Support

- (i) Viability Gap Support under this scheme shall be determined by Empowered Committee on a case to case basis.
- (ii) Viability Gap Support can be in the form of any of the following or a combination thereof:
 - (a) Capital Subsidy: upfront, proportional or back-loaded;
 - (b) Interest free or concessional loan;
 - (c) Land free of cost or at concessional price on lease basis;
 - (d) Building free of cost or at concessional price on lease basis;
 - (e) Subsidy in lump or related to outputs;

- (f) Norm based recurring expenditure grants;
- (g) Any other appropriate mode of providing support.

6. Empowered Committee for approval

- (i) There shall be an Empowered Committee, constituted under Rule 55 of the Rules of Business to consider and approve the proposals submitted for Viability Gap Funding.
- (ii) The Committee will be headed by Chief Secretary and will comprise of the members as under:
 - i. Principal Secretary Finance;
 - ii. Principal Secretary / Secretary of the concerned Administrative Department;
 - iii. Secretary in charge of Expenditure;
 - iv. Secretary, Plan
- (iii) In case Chief Secretary is not able to preside over the meeting for any reason, Principal Secretary Finance will chair the meeting. Secretary, Plan shall be the Member Secretary of the Committee:
- (iv) Secretariat of the Empowered Committee will examine the proposal and seek additional information, if required for presenting a complete proposal for consideration of the Empowered Committee. In case the proposal does not have required information or required information is not furnished despite being so asked for by the Secretariat, Secretariat, with the approval of Chairman of the Empowered Committee, will summarily reject the same.
- (v) Secretariat of the Empowered Committee will obtain the comments of the Finance Department before presenting the proposal for the consideration of the Empowered Committee.
- (vi) Empowered Committee will be competent to approve, reject or approve with conditions any proposal for viability gap funding.
- (vii) All approvals will be subject to adequate budgetary provisions as existing or being made available to the concerned department; and being available with the autonomous organisations or the local body, as the case may be.

7. Selection of Private Sector Partner for PPP Projects approved for Viability Gap Funding

- (i) Private organization shall be selected as partner through a transparent and open process. Suo moto proposals for PPP projects would also be considered on a Swiss Challenge method.

- (ii) The bidding shall be a two envelop process-technical and financial. Both the bids would be received together, except where the Empowered Committee permits the process of pre-qualification first;
- (iii) Financial bids may be opened only for technically qualified bidders;
- (iv) Technical bids may be either used for eliminating technically non-qualified bidders or technically bids with a minimum eligibility cut-off can be given marks out of the portion of total marks reserved for technical competence;
- (v) Financial criterion for bidding shall be additional / lesser amount of viability gap funding required in comparison to the viability gap approved by the Empowered Committee;
- (vi) Administrative Department shall be competent to finalize the private sector partner if the viability gap support asked for by the lowest evaluated competitive bidder is lesser than or equal to the viability gap support approved by the Empowered Committee;
- (vii) Administrative Department shall seek prior approval of the Empowered Committee again in case the viability gap support asked for is higher than the support agreed to by the Empowered Committee in the first instance.

8. Form of Agreement

- (i) The format of PPP agreement is at annex 2. The draft agreement is only a template. It will be substantially reviewed and modified in specific cases. The agreement will have specific provisions for the disbursement process, periodicity of release and the conditions subject to which the viability gap support will be delivered.

9. Entering into Agreement and Disbursement of Viability Gap Support

- (i) The Administrative Department, and the Private Organization shall enter into a bipartite agreement for the purposes of this scheme;
- (ii) The viability gap support would be strictly released in accordance with the agreement.

Annex-1

Proforma for submission of the proposal for Viability Gap Funding under RSS-VGF

S.No.	Item	Response
1.	General	
1.1	Name of the Project	
1.2	Location (District/Town)	
1.3	Administrative Department	
1.4	Name of Sponsoring Authority	
2.	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3 (a)	Estimated capital costs with head-wise break-up	
2.3 (b)	Indicate the basis of cost estimation	
2.4 (a)	Estimated recurring expenditure with head-wise break-up (per annum)	
2.4 (b)	Indicate the basis of cost estimation	
2.5 (a)	Estimated non-recurring expenditure with head-wise break-up	
2.5 (b)	Indicate the basis of cost estimation	
2.6	Project Implementation Schedule (PIS)	
3.	Requirement as per Standard Norm	
3.1	Land (in sq. yards)	
3.2	Capital Expenditure -Constructed area -Accommodation	
3.3	Non-recurring expenditure	
3.4	Recurring expenditure per annum	
4.	Revenue Streams	
4.1	Annual flows during concession period	
4.2	Indicate the underlying assumptions	
4.3	Who will fix the tariff / user charges? Please	

specify in detail

5. Investment by 'Private Organisation' / 'Not for Profit Organisation'

- 5.1 Indicate availability of land
 - if yes, area
- 5.2 Indicate availability of building
 - constructed area
 - accommodation
- 5.3 Likely Capital Investment
 - Item-wise break-up
- 5.4 Likely revenue expenditure
 - Item-wise break up
- 5.5 Likely non-recurring expenditure
 - Item-wise break up

6. Viability Gap Funding required from Government

- 6.1 Capital Grant
 - up-front, proportional or back-ended
- 6.2 Loan
 - interest free
 - at concession rate
- 6.3 Land (in sq. yards)
 - free of cost
 - at concessional price (on lease)
- 6.4 Building
 - free of cost
 - at concessional price (on lease)
- 6.5 Recurring Grant
 - amount
 - period

7. Clearances

- 7.1 Indicate clearances required from other Committee
- 7.2 Other support required from the State Government

8. Criteria for short-listing

8.1 Indicate the criteria for short-listing

9. Others

9.1 Remarks, if any

Annex-2

This Agreement is entered into this the _____ day of _____
20_____.

BETWEEN

1. The Governor of Rajasthan represented by the _____, _____ Department and having its principal office at _____ (hereinafter referred to as the "Government" which expression shall, under repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the First Part.

AND

2. _____, a Company/ Society/ Trust incorporated/ formed under the provisions of the _____ and having its registered office/ administrative **office at _____ of the Second Part.**

WHERE AS

1. The Government has decided to establish (Project Facilities) in _____, District _____ of the State in accordance with the terms and conditions set forth in this Agreement.
2. The Empowered Committee constituted under the Rajasthan Social Sector Viability Gap Funding Scheme has passed a resolution in its meeting held on _____ for establishing the above referred (Project Facilities) in _____ mode of Public-Private Partnership and for viability gap funding/ support.
3. The Government had accordingly invited open proposals by its Expression of Interest/ Tender Notice No. _____ dated _____.

OR

The Government had received a proposal suo moto from _____ and invited competing counter proposals from others by its Notice No. _____ dated _____.

(in the spirit of "Swiss Challenge" approach)

4. The Government had prescribed a two-envelop process - technical and financial. Both the bids were received together from all the bidders and financial bids were opened only for technically-qualified bidders.

OR

Technical bids were received first for the process of pre-qualification. Financial bids were received from the technically-qualified bidders.

5. After evaluation of the bids received, the Government has accepted the bid of _____ and issued its Letter of Acceptance No. _____ dated _____.

NOW, THEREFORE, THIS AGREEMENT/MOU WITNESSETH AND PARTIES AGREE AS FOLLOWS:

SCOPE OF THE PROJECT

The scope of the project shall mean and include.

1. Creation of Project Facilities as set forth in Schedule A and in conformity with specifications and standards set forth in Schedule B.
2. Operation and maintenance of the Project Facilities as set forth in Schedule C.
3. Performance and fulfillment of all the obligations as set forth in Schedule D and matters incidental thereof or necessary for performance of any or all the obligations of this Agreement.

(including specifying fee to be charged, reservations to be made, etc.)

PERMISSION AND VIABILITY GAP SUPPORT

1. The Government hereby grants to _____ permission to create, operate and maintain the Project Facilities and _____ hereby agrees to create, operate and maintain the Project Facilities.
2. The Government also hereby grants to _____ Viability Gap Support under the Rajasthan Social Sector Viability Gap Funding Scheme in the form of _____ - as set forth in Schedule E.

(Specifying the disbursement process, periodicity of release, repayment and conditions subject to which the Viability Gap Support will be delivered).

OBLIGATIONS OF THE SECOND PARTY

- (a) The second party shall create the Project Facilities.
 - (b) manage, operate and maintain the Project Facilities and regulate the use thereof by third parties.
 - (c) demand, collect and appropriate fee from persons liable for payment of fee for using the Project Facilities or any part thereof.
 - (d) perform and fulfill all the obligations under and in accordance with this Agreement.
 - (e) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations under this Agreement.
 - (f) not assign, transfer or sublet or create any lien or encumbrances on this Agreement or on the whole or any part of the Project Facilities nor transfer, lease or part possession thereof, save or except as expressly permitted by this Agreement or mutually agreed, in written.
2. The Second Party shall also
- (a) at its cost and expenses procure finance for and undertake the design, procurement, creation, operation and maintenance of the Project Facilities and observe, fulfil, comply with and perform all its obligations setout in this Agreement.
 - (b) comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance this Agreement.
 - (c) discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
 - (d) make necessary applications to the relevant Government Instrumentalities as may be required for obtaining applicable permits and obtain and keep in force and effect such applicable permits in conformity with the Applicable Laws.
 - (e) procure, as required the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Facilities.
 - (f) perform and fulfil its obligations under the Financing Agreements.
 - (g) repay the Viability Gap Support granted by the Government as set forth in Schedule E.
 - (h) not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Government.

- (i) not undertake or permit any change in ownership except with the prior written approval of the Government.

OBLIGATIONS OF THE GOVERNMENT

The Government shall

- (a) upon written request from the Second Party, and subject to the Second Party complying with Applicable Laws, provide all reasonable support and assistance to the Second Party in processing to the Second Party in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project Facilities.
- (b) upon written request from the Second Party, assist Second Party in obtaining to all necessary infrastructure facilities and utilities, including water and electricity at rates and or terms those generally available to commercial customers receiving substantially equivalent services.
- (c) procure that no barriers are erected or placed on the Project Facilities by any Government Instrumentality or persons claiming through or under it, except for reasons of emergency, national security or law and order.
- (d) not do or omit to do any act, need or thing which may in any manner be violative of any of the provisions of this Agreement.
- (e) support, cooperate with and facilitate the Second Party in the implementation and operation of the Project Facilities in accordance with the provisions of this Agreement.

GENERAL AND FINANCIAL

1. The Second Party hereby agrees and undertakes that it shall achieve Financial Close within _____ days from the date of this Agreement and notify the Government forthwith of the Financial Package and the Financial Model which is acceptable to the Lead Lender.
2. The Government agrees to provide to the Second Party Viability Gap Support as set forth in Schedule E. The Viability Gap Support shall be disbursed in accordance with the provisions set forth in Schedule E.
3. The Second Party agrees to pay to the Government a sum of Rs. _____ per year for _____ year commencing from _____ in lieu of
4. The Second Party acknowledges and agrees that upon payment of Fee, any user shall be entitled to use the Project Facilities and the Second Party shall not place or cause to be placed, any restriction on such use, except specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

The Second Party acknowledges and agrees that any user who is not liable for payment of the Fee shall be entitled to use the Project Facilities and the Second Party shall not place or cause to be placed, any restriction on such use, except specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

5. The parties hereby agree that the Fee shall be revised annually on April 1, if considered appropriate, provided however, that such revision shall not be effected until a period of six months has elapsed from the date of the immediately preceding determination of Fee.
6. The Second Party shall open and establish an Escrow Account with a Bank and shall deposit the following inflows and receipts in to the Escrow Account.
 - a) all Funds constituting the Financial Package
 - b) all Fee and any other revenues from or in respect of the Project Facilities, including the proceeds of insurance claims, if any.
 - c) all payments by the Government, including Viability Gap Support.

Provide that the Lead Lender may make direct disbursement to a third party in accordance with the express provision contained in the Financing Agreements.

7. The Second Party shall, for the performance of its obligations hereunder, provide to the Government no later than ____ days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent Rs. _____. Until such time this guarantee is provided by the Second Party, the Bid Security shall remain in force and effect.

The Government shall upon request made by the Second Party, release the said guarantee from the bank upon the second party expending on the Project Facilities an aggregate sum that is not less than ____ per cent of the Total Project Cost and provided the Second Party is not in breach of this Agreement.

8. The Second Party shall give irrevocable instructions to the Escrow Bank that deposits in the Escrow Account shall be appropriated as set forth in Schedule F.
9. The Second Party shall effect and maintain at its own cost such insurances for such maximum sum as may be required under the Financing Agreements, and the Applicable Laws.
10. The Second Party shall maintain books of accounts recording all receipts, income expenditure, payments, assets and liabilities in accordance with this

Agreement, Applicable Laws and Applicable Permits. The Second Party shall provide two copies of its Balance Sheet, Cash Flow Statement and Profit & Loss Account along with a report thereon by its Statutory Auditors, which 90 days of the close of the Accounting year to which they pertain.

11. The Government shall have the right to inspect the records of the Second Party and require copies of relevant extract from books of accounts, duly certified by the Auditors.
12. The Second Party shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of five reputed firms of chartered accountants. All fee and expenses of the Statutory Auditors shall be borne by the Second Party.
13. The Government shall not be liable in any manner whatsoever to the Second Party in respect of any loss, damage, lost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.
14. This Agreement shall be valid initially for a period of ____ years. Thereafter, it may be further extended, by mutual consent, between the parties hereto. Such extension(s) shall be for a period of _____ years.
15. This Agreement supercede all previous communications representations or understandings, either oral or written, between the parties relating to the subject matter hereof.
16. This Agreement cannot be amended except in writing and under signature of parties, such document making specific mention that it purports to amend this Agreement.
17. This Agreement is one integrated document and shall be construed as a whole. In case any term or provision of this Agreement is held unforceable, invalid or illegal in any respect, it is the intention of the parties that the validity of the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the unforceable, invalid or illegal terms or provision had never been contained herein and this Agreement shall be accordingly construed.
18. This Agreement may be executed in two counterparts, each counterpart being equally valid. Both such counterparts shall be deemed original.
19. This Agreement shall be construed, governed and implemented in accordance with the laws applicable in India.
20. The parties agree to use their best efforts to negotiate in good faith and settle amicably and dispute that may arise or relate to this Agreement or a breach

thereof. If such dispute, doubt or question, arising out of or in respect of this Agreement or the subject matter thereof, cannot be settled amicably through ordinary verifications by the parties, the same will be decided by arbitration in terms of the Arbitration and Conciliation Act, 1996.

IN WITNESS WHEREOF the parties hereto have put their hands at Jaipur on the date herein above mentioned.

For and on behalf of the Governor of Rajasthan.

(_____)
_____, Department

For and on behalf of _____

(_____)

Witnessed By