



**SECRETARIAT FOR INFRASTRUCTURE
DEVELOPMENT AND INVESTMENT**

**GUIDELINES
FOR
BOO/BOT PROJECTS**

MINISTRY OF POLICY PLANNING AND IMPLEMENTATION

**PUBLIC-PRIVATE PARTNERSHIP IN
INFRASTRUCTURE DEVELOPMENT**

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F O R E W O R D

A well developed economic infrastructure in the form of a good network of road and rail transport, an adequate supply of safe water, an adequate and uninterrupted power supply, a modern telecommunication system, a system of waste disposal which is environment-friendly, port facilities which are not congested and other necessary economic infrastructure facilities are essential prerequisites for higher levels of investment and growth. Inefficient and outmoded systems are counter-productive; they retard economic growth, deter investors and have an adverse effect on the quality of life of the people.

The development of the infrastructure in all the sectors to the desired levels and managing them in a cost effective manner call for capital and entrepreneurial skills on such a massive scale that the Government would not be able to mobilise in the short or the medium-term, without recourse to local or foreign commercial borrowing. The Government has therefore, decided to seek private sector participation in infrastructure development.

The involvement of the private sector in infrastructure development, which has come to be known as the BOO/BOT strategy, has been resorted to with encouraging results in both developed and developing countries. The process of project development is nevertheless complex. The success of a project would depend on the skillful structuring of a partnership arrangement among the parties involved; the Government, the investors and the lenders, while bearing in mind the interests of the users of the facility, the legal, technical and financial considerations and more importantly, the impact on the community and the environment.

These Program Guidelines seek to set out the procedures to be followed and the considerations which should guide projects from the stage of conceptualisation to execution. It is hoped that they would be of use to both the prospective investors and the state agencies intending to promote BOO/BOT projects in their respective sectors.

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PUBLIC-PRIVATE PARTNERSHIP IN INFRASTRUCTURE DEVELOPMENT

Program Guidelines for BOO/BOT Projects

1. BACKGROUND AND GENERAL POLICY

1.1 There is an urgent need to improve the infrastructure facilities in Sri Lanka to match international standards in order to cope with the higher levels of anticipated investments in industry, agriculture and the service sectors. Further, it is widely accepted that a well developed economic infrastructure, among other things, creates employment, promotes local and foreign investment and transfer of technology, fuels business productivity and expansion and contributes greatly to the improvement of the standards of living of the people and their access to social and economic services. Conversely, an inadequately developed or inefficiently performing infrastructure stifles economic activity and affects the quality of life of every section of the community.

1.2 The ability of the Government to finance the required infrastructure facilities is limited by the amount of revenue that can be generated from the available low income base of the country and increasing world wide competition for funds through donor assistance. Also, there are competing demands on Government resources arising from the need to maintain a reasonable standard of social welfare. Hence, in pursuance of the accepted policy of the Government of encouraging private investment in the economic development of the country, it is now proposed to attract private investment in the development of infrastructure facilities.

1.3 The Government therefore, seeks the collaboration of the private sector, local and foreign, on mutually beneficial terms in the development of the infrastructure on Build-Own-Operate (BOO) and Build-Operate-Transfer (BOT) or other appropriate variants of Public-Private partnership arrangements.

1.4 In promoting private investments, the Government will endeavour to maintain a proper balance between the need to provide a satisfactory service to the public at reasonable cost while safeguarding their rights to existing alternative services and to ensure an adequate return on investment.

1.5 During BOO/BOT operations the Government will extend all appropriate assistance for the successful operation of the program, in a spirit of healthy and beneficial co-operation between the public and the private sector.

1.6 In determining the terms of the BOO/BOT projects, the Government will negotiate with the objective of providing satisfactory services to the public at reasonable costs, while providing the private sector owner/operator with a risk-adjusted return. In the case of projects initiated by the Government, a tendering process will be conducted to secure such services at reasonable cost to the consumer by encouraging competition among potential private sector participants, while ensuring that their return on investment is reasonable but not excessive.

1.7 Power generation, Communications, Transportation, Ports, Water Supply and Drainage, Shopping Complexes, Industrial Estates and Waste Disposal are some areas where the potential exists for such projects.

2. MAIN FEATURES OF THE BOO/BOT PROJECTS

2.1 BOT Projects are contractual arrangements whereby the Contractor undertakes the construction, financing, operation and maintenance of a given infrastructure facility for a given period of time, during which, the Contractor is allowed to charge the facility users tolls, fees, rentals and other charges sufficient to enable him to recover project costs, operating costs and a risk adjusted return on his investment. Upon termination of the contract he transfers the facility to the Government in a condition and at terms determined in the original agreement.

2.2 These projects will normally involve only non-recourse financing and the funds for the project will be raised without any direct state guarantee of repayment. Instead, the investors in and the lenders to the project company must look to the revenues and efficient operation of the project for the return on equity and servicing of their loans.

2.3 In a BOT project, after a period of operation, subject to terms of negotiations, the new facility may be transferred to the Government. Where the Government is satisfied with the operation of the project during the concession period by the owner/operator, the Government may consider extending the concession on mutually beneficial and acceptable terms, or re-negotiate or re-tender the project. Alternatively, the agreement between the Government and the private sector may stipulate that the project will be pursued on a BOO or other suitable basis from the outset.

2.4 Normally, the Government will identify a project and invite the private sector to submit proposals in conformity with Program Guidelines and project specifications together with their own technical, organisational and financial approach. Private sector investors may also advance proposals on their own initiative. If such a proposal appears to have the potential to make a significant contribution to infrastructure development while meeting the criteria applicable to BOO/BOT projects, the Government may enter into negotiations with a view to developing a viable project.

3. INSTITUTIONAL FRAMEWORK

3.1 The focal point of the BOO/BOT program is the Secretariat for Infrastructure Development and Investment (SIDI) established within the Ministry of Policy Planning and Implementation. SIDI is responsible for all aspects of project development in collaboration with key policy and implementing Ministries.

The SIDI is primarily be responsible for:

- i Identifying appropriate projects and preparing profiles that may be suitable for implementation under BOO/BOT or other basis, in co-operation with implementing agencies and building an inventory of such projects;

- ii Ensuring that proposed projects meet established socio-economic, technical, and environmental policy criteria;
- iii Ensuring that proposed projects conform to the Program Guidelines and governing legislation;
- iv Administering, in collaboration with the relevant Ministries and key implementing agencies, the process of project development;
- v Negotiating with Investors, with input from relevant Ministries and other implementing agencies, on project proposals and providing recommendations on decisions to accept or reject; and,
- vi Overseeing and monitoring the progress and assisting in the smooth execution of projects.

4. ELIGIBLE INFRASTRUCTURE PROJECTS AND SECTORS

4.1 Some infrastructure projects which are deemed to be financially viable and in general conformity with the Program Guidelines for execution on BOO/BOT or other appropriate variants are construction, rehabilitation, modernisation, improvement and expansion in the following sectors:

- i Telecommunication systems, network and services;
- ii Water supply and distribution, sewerage and drainage;
- iii Power generation, distribution and services;
- iv Highways and expressways including bridges, tunnels, interchanges etc.;

- v Airports, terminals and related aviation facilities;
- vi Port development including terminals, piers, handling, storage and other services;
- vii Industrial estates including services to support commercial and non-commercial activities;
- viii Environmental and solid waste management projects including composting plants, collection facilities, incinerators, landfill and other municipal and rural services and facilities;
- ix Rail and non-rail based transportation systems and facilities; and
- x Other urban, municipal and rural infrastructure that Government views as priority areas of development to support economic development activities.

5. INTEGRATION OF PROPOSED PUBLIC/PRIVATE PROJECTS WITH TRADITIONAL PUBLIC SECTOR INFRASTRUCTURE ACTIVITIES

5.1 In order to ensure that public/private projects are pursued in an integrated manner with traditional and ongoing infrastructure project activities that cannot be advanced on a BOO/BOT or other basis, SIDI will have an overview of infrastructure development in the country.

5.2 The line Ministries/Agencies traditionally responsible for infrastructure development will, in co-operation with SIDI select priority projects that can be pursued on a BOO/BOT basis and provide technical input on data, specifications, and requirements so that documents and procedures for solicitation of bids can be developed. SIDI and the relevant line Ministry/Agency will also develop a ranking system so that projects which can be pursued on a BOO/BOT basis

could be ranked in order of priority and potential for implementation. Projects which come up without Government solicitation, but do not lend themselves to implementation on BOO/BOT basis may be undertaken by the Government on a traditional basis, thereby facilitating project development efficiency and eliminating overlap and competition for financial and technical resources.

6. THE PROCESS OF PROJECT DEVELOPMENT AND APPROVAL

The process of project development and approval takes two forms depending on whether the proposals are solicited or unsolicited.

6.1 Solicited Proposals

6.1.1 In this type of project, the Government through SIDI and the relevant line Ministries/agencies will identify eligible and viable project candidates, develop bid documents, and tender eligible projects to the private sector through a competitive bid process using public advertisement. SIDI and the relevant line Ministry/agency will then review, evaluate, rank and determine project candidacy and bidders using established bid evaluation criteria.

6.1.2 After the bid evaluation stage, the best proposal or proposals will be selected and approved in principle, and a Letter Of Intent (LOI) issued by SIDI in consultation with the relevant line agency. LOI will enable the bidder to move to the second stage of the project process. In the second stage, the bidder will take the following steps:

- i Initiate action to establish a project company incorporated or registered in Sri Lanka;
- ii Seek required approvals and consents;
- iii Initiate an environmental and social impact study;
- iv Prepare an implementation plan;

- v Finalise and document equity and loan arrangements;
- vi Prepare and submit the final technical and financial proposal.

6.1.3 Upon compliance with all aspects of project development in the second stage, bidders will go through the negotiation stage, at the end of which the Government, if satisfied with regard to project viability and compliance with established criteria, may grant approval of terms and conditions of contract and execute agreements binding parties to financial arrangements and construction of the facility in question.

6.2 Unsolicited Proposals

6.2.1 The second form of Public/Private Partnership process involves the acceptance of unsolicited proposals from the private sector to undertake projects on a BOO - BOT or other appropriate variant basis. It is vital for the success of the BOO/BOT program to provide an opportunity for the private sector to identify and structure projects on their own initiative. This is in recognition of the fact that the private sector proposers may have better bottom line cost control capability, knowledge of new technologies, or special insight into market solutions to development problems, than known to the public sector.

6.2.2 Evaluation of unsolicited proposals shall be conducted using the same rigorous criteria as in the normal government initiated proposals. Unsolicited proposals will be entertained for the eligible sectors listed above provided that they:

- i are consistent with Government Policy;
- ii do not conflict with the Government's plan for solicited proposals; and

- iii meet the same threshold level of criteria in order to comply with Program Guidelines including minimum technical criteria, economic parameters, environmental and social impact criteria, financial viability, operational viability, marketability, and pre-qualification criteria of the firm in question.

Proposers of unsolicited projects are urged to discuss them at an early stage with SIDI and the relevant line Ministries/agencies, who will offer guidance on whether the projects appear to be in fulfillment of the above criteria.

6.2.3 If an unsolicited project meets the initial conditions described above, and if the proposers are prepared to proceed with the development of a detailed proposal, SIDI will provide the proposers with a Statement of Proposal Requirements (SPR). SPR will give detailed guidance on the sectoral specifications and requirements that any proposal needs to meet in order to advance to the second phase of the process. Additionally, guidance will be given on the format in which the proposal shall be submitted.

6.2.4 At this stage, SIDI will also provide the proposer with a letter acknowledging the submission and Terms of Reference (TOR) to prepare a detailed proposal. In the interest of promoting program transparency and integrity, SIDI will register and/or announce publicly the receipt of the proposal and that the Government has offered TOR to proceed accordingly.

6.2.5 The issue of TOR, letter of acknowledgement, and public announcement, do not represent in any way a commitment by the Government to the project. Only after a final and more detailed proposal is evaluated and approved will the Government provide the proposer of an unsolicited project with a Letter Of Intent (LOI).

6.2.6 In the case of proposals submitted in response to TOR, SIDI will consider reimbursing a portion of the cost incurred in carrying out project feasibility studies as a means to further encourage the active participation by the private sector in the project development cycle.

7. **EVALUATION OF PROPOSALS: SOLICITED AND UNSOLICITED**

The evaluation of proposals, solicited or unsolicited will be guided by the same criteria. The initial stage in the evaluation of proposals is to determine whether:

- i the bidders or proposers have the technical, financial and operational expertise and experience to successfully implement the project. Greater weight will be given to bidders or proposers who have experience in the sector in question and with public/private partnerships;
- ii the project can be successfully financed in conformity with the Program Guidelines, i.e., on a non or limited recourse basis with no sovereign financial guarantees of repayment;
- iii the project can stand the rigorous test of compliance with all social and environmental impact guidelines;
- iv the project can yield significant social, economic, and financial returns and provide a product or a service to users at the least cost possible and with acceptable terms and conditions;
- v the project offers some intrinsically unique or valuable asset that benefits the country and consumers alike. Examples would include projects that provide higher levels of employment, address key environmental or acute infrastructure needs, intend to train a number of nationals over a given period of time and

projects that re-invest in the human, financial, and technical resources of the country.

SIDI would endeavour to avoid taking longer than sixty days to evaluate solicited and unsolicited proposals, so that the private sector receives a determination in an expeditious and efficient manner.

8. LETTER OF INTENT (LOI)

8.1 Once proposals, solicited or unsolicited, are evaluated and projects are approved in principle, the next stage is to reach agreement between the Government and the bidders or proposers on the terms of issuance of LOI.

8.2 LOI confers on the project bidders or proposers, some degree of exclusivity in relation to the project for a period of time long enough to enable the sponsor to finalize the project proposal. LOI determines the period of exclusivity, spells out any changes to the original proposal that must be made in order to remain in compliance, and defines what technical inputs are required in order to reach project finalization and negotiation.

8.3 LOI provides the proposer and/or successful bidder with assurances, for a specific period of time, that the Government will not re-invite or accept any competing projects thereby penalizing entrepreneurship and risk. On the other hand, in cases where the proposer and/or successful bidder cannot comply with the terms of LOI or if negotiations are unsuccessful, LOI provides the Government with the right to pursue the project through the public bidding process.

8.4 In brief, LOI grants protection to the proposers or bidders against any violation of their intellectual and financial investment for a specified period of time, thereby rewarding initiative, originality, and creativity. It also provides the Government with an avenue to pursue projects in the event of non-compliance, non-performance and unfruitful negotiations.

9. PRE-QUALIFICATION CRITERIA AND MINIMUM STANDARDS

In all cases, bidders or proposers wishing to undertake infrastructure development in partnership with the Government must meet certain pre-qualification criteria.

9.1 Ownership

The bidders or proposers can be domestic or foreign or joint ventures and will be governed by the same regulations as other enterprises which qualify for concessions under the Board of Investment (BOI). However, before entering into any contract in Sri Lanka, a foreign venture should acquire legal status in Sri Lanka by either incorporating a company under the Companies Act of Sri Lanka or registering itself under Part xiii of that Act as a company incorporated outside Sri Lanka but having a place of business in Sri Lanka.

9.2 Experience or Track Record

The bidders or proposers must possess adequate experience in the sector in question as well as with projects structured and operated in this manner. Consortium arrangements will be evaluated on the basis of the individual and collective experience and expertise of the firms in question. Key personnel must also demonstrate experience in managing and implementing projects of this kind.

9.3 Financial Capability

In all successful public/private partnerships, financial stamina and strength of the bidders or proposers are key ingredients to project success. Successful bidders or proposers will demonstrate the ability and experience to structure and complete financial packages that are viable and are designed on a non-recourse or limited recourse basis. Evidence of financial capacity to mobilize domestic and foreign resources, debt and equity, will be a *de rigueur* element in the advancement of any project.

9.4 Minimum Standard and Specifications

All bidders and proposers must meet certain minimum standards regarding specifications and performance and the delivery of certain goods and services as determined by SIDI and the relevant line Ministries/agencies. In the case of solicited proposals, SIDI and the relevant line Ministries/agencies will outline the minimum standards and performance levels that successful bidders must meet.

10. ECONOMIC PARAMETERS

10.1 In order to evaluate all projects with uniformity and to provide sponsors with an adequate basis to develop financial and economic proposals, all bids will be evaluated on a present value basis. Pre-qualifying project sponsors must calculate their financial and economic rate of return with the following economic parameters in mind:

- i inflation and discounting rates;
- ii foreign exchange rates;
- iii maximum period of project construction;
- iv fixed term for project operation and collection of user fees;
- v adjustable tables to reflect changes in charges; and
- vi minimum period of repayment.

10.2 At this juncture, the Government programme on BOO/BOT projects will be guided by pre-qualifying projects and proposers who provide the proposal with the least cost basis and that profitability should not be the determining consideration. In this case, a higher profit/lower cost bid is preferable to a high cost/reasonable profit bid as long as the discounted value of revenues is lower and satisfies the required design and performance standards. A bid with the possibility of a good return for a lower cost infrastructure facility is preferred to a lower return/higher cost alternative.

11. BID DOCUMENTS

11.1 In the case of solicited projects, SIDI in cooperation with the relevant line Ministry/agency will prepare bid documents for the project to guide the bidder in preparing pre-qualification statements and bid proposals. These bid documents shall consist of the following:

- i Instructions to bidders;
- ii Project purpose and objective;
- iii Technical standards and specifications and minimum economic parameters;
- iv Statement of proposal requirements;
- v Environmental and social compliance assessment;
- vi Draft contract;
- vii Pre-qualification criteria and procedures;
- viii Bid evaluation criteria (and sectoral BEC as applicable).

12. BIDDING PROCEDURES

12.1 A pre-bid conference shall be conducted by SIDI at least sixty days before the deadline for the submission of bids. At this conference, potential bidders will have the opportunity to seek clarifications on the scope of work, bid documents, bid evaluation procedures, contract terms and conditions and any other non-proprietary information that may be required to submit high quality bids.

12.2 SIDI will be responsible for receiving and publicly opening the bids at the stipulated time and place and will evaluate all bids as to their conformity with the requisite standards, criteria, and prices.

13. AWARDS

13.1 Upon evaluation, SIDI and the relevant line Ministry/agency will recommend to the Cabinet for approval, the award of the contract to the bidder that combines low cost and most favourable technical, economic, and social value approach.

13.2 The Government reserves the right to reject any and all bids that are not in compliance with the interests of this program and accept any offer that is most advantageous to the Government. Moreover, if no bids are viewed to be in compliance, the bidding could be declared suspended.

14. PERFORMANCE BONDS AND BID BONDS

14.1 In submitting bids for projects, bidders are required to submit authentic bid bonds as specified in the bid documents, which serve to guarantee that the bidder, if selected, will enter into a contract with the Government, according to the terms and conditions of the tender.

14.2 In some cases, performance bonds will be required in order to ensure and guarantee compliance with meeting certain project milestones by the contractor throughout the life of the concessions. In other cases, performance will be governed by fluid arrangements, whereby penalties and rewards are contractually a part of meeting or failing to meet pre-determined project performance standards.

**15. ALLOCATING RISKS AND RESPONSIBILITIES:
INCENTIVES, CONCESSIONS AND OTHER FORMS OF
SUPPORT BY THE GOVERNMENT**

On a case by case basis, the Government is willing to provide the successful bidder or proposer with some or all of the following concessions and incentives with a view to providing high quality and low cost infrastructure to the public of the country:

15.1 Concessions and Incentives

15.1.1 In order to pursue BOO/BOT, or other techniques in the eligible sectors, the Government is willing to consider granting fiscal incentives, concessions supportive of the unique nature of infrastructure investments, and/or franchises. In view of the compelling technical and financial characteristics, the long-term nature of BOO/BOT projects, and the variety of risk sharing involved between all parties, project companies may be eligible for a variety of incentives and concessions as determined by the contract. The length of the concession period will be determined by the characteristics of each individual project.

15.1.2 BOO/BOT projects, depending on the merits of each case, may be eligible for the following tax incentives and concessions which are to be negotiated and agreed with projects individually:

- i Tax Holiday;
- ii Concessionary rate of income tax based on turnover;

- iii Exemption from income tax on dividends to non-resident shareholders;
- iv Exemption from income tax on dividends to resident shareholders during tax holiday;
- v Exemption from income tax on royalties;
- vi Exemption from capital gains;
- vii Exemption from customs duties, turnover tax and excise duties at point of importation in respect of project related goods for the exclusive use of the project; and
- viii Others to be negotiated.

15.2 Performance Guarantees by Government

In order to ensure project viability, certain performances by Government agencies may be required. These include performance in the supply of goods or services, to grant certain licences, purchasing of certain goods or services, conversion or exchange of Rupees into convertible currency, and/or provision of any other necessary inputs vital to the success of the project. The Government of Sri Lanka will consider providing any or all of these performance guarantees only if they would facilitate the selection of viable least cost projects in the interest of the public good.

15.3 Financial or Equity Contributions

Depending on the nature of the project and the structuring of the security package to ensure project success, it may be in the interest of the public good as well as the project, to have the Government provide certain levels of financial support, direct or indirect, or equity participation in projects on a case by case basis.

15.4 Logistical or Physical Facilities to be Provided by the Government

In some cases the Project may require the Government of Sri Lanka to provide certain logistical/physical facilities or support to contribute to project success. This can include, but is not limited to rights of way and other servitudes, part of a physical structure, donation of certain land or assets, etc.

15.5 Approval of Designs

The Government will approve appropriate designs and plans prepared by bidders or proposers and/or other contractors, if SIDI and the relevant Line Ministry/Agency are satisfied with their conformity to program and project objectives.

15.6 Approval of Tolls/Fees/Tariffs/Charges, etc

The Government will approve all tolls and fees determined as fair and appropriate to project viability in accordance with the least cost/high profit concept of the bid award. Moreover, in recognition that long term arrangements require adjustments in fees and tolls, the Government will provide, in the bidding documents and contracts, a formula where adjustments to tolls, fees, charges, etc., can be instituted as required.

15.7 Enhancement of the Security Package

As noted above, all public/private projects must be undertaken with limited or no recourse to project lenders in the occurrence of project failure or abandonment. While, project risk allocation must be agreed to on a case by case basis, the Government will consider enhancing the security package provided to lenders/investors in order to realize viable projects and successful long term results. The Government, on a case by case basis, is prepared to enhance the security package by assuming or providing protection against certain risks such as:

- i Protection against force majeure;
- ii Protection against changes in tax regimes;
- iii Allow adjustments in tolls, charges, and fees and mitigate negative movements affecting such rates;
- iv Ensure convertibility of local currency and remittance of foreign exchange to cover imports, debt service, dividends and capital; and
- v Provide performance guarantees in concert with the performance guarantees provided by the private sector.



