

Privatization Policy:
Approval for the Irrigation Projects on Build,
Operate and Transfer basis

Government of Maharashtra,
Irrigation Department
Government Resolution No BOT 702/(425/02)/MP-1
Dated 15th July 2003

1. Introduction:

The Government of Maharashtra had established various Irrigation Development Corporations to undertake projects, and to complete them and supply water on large scale for irrigation. However, due to the shortage of funds at present, many projects are in the state of incompleteness. To overcome this, it was under consideration of the Government to transfer these projects to private sector on the basis of Build, Operate and Transfer (BOT). Accordingly a proposal was submitted to the Cabinet for transfer of Irrigation Projects on BOT basis. The cabinet has approved the proposal and has taken following decision .

2. Government Resolution:

A) Incomplete irrigation projects under control of Irrigation Department as well as under Irrigation Corporations are now to be completed with participation from the private entrepreneurs/contractors on BOT basis as per conditions stated in the attached Annexure.

B) Viability of such projects should be decided as per prevailing standards and be sent to the Government for approval.

C) The Entrepreneurs/contractors who are going to invest in such projects, expect to get them returns on their investment in construction as well as maintenance and operation during the stipulated period. After completion of the period, the projects will be transferred to the Irrigation Department. Such condition is assumed as part of this policy.

D) As per clause in 'B', tenders will be invited for completion of the projects from private Entrepreneurs and contractors after ascertaining their capability as per prevailing procedure. At the end of the tender process, selected entrepreneurs/contractors will enter into an agreement and transfer and re-transfer the project as per clauses attached to such agreement and as approved by the Government.

3. This Government Resolution shall come into effect immediately.
4. This Government Resolution is issued after approval of the Cabinet and with the concurrence of the Finance Department obtained vide their informal reference No. Pr. Secretary (Finance)/5568, dated 31.12.2002.

By order and in the name of the
Governor of Maharashtra,

(S.V. Deshpande)
Deputy Secretary to Government.

ANNEXURE
To the
(G.R. No. BOT/702/(425/02)MP-1, dated 15.07.2003)

Above Resolution is accepted by the Government on the following conditions/process/ principles

1.0 Process of Privatization

1. The private Entrepreneur shall complete the Irrigation Project with his own investment and recover the said investment through water charges, fisheries, tourism. After recovery of investment, the said projects shall be transferred to the Irrigation Department of the Government after stipulated period of time.
2. Viability of the project shall be checked before taking up the project for privatization as per prevailing rules/principles.
3. The plans and estimates shall be prepared on behalf of Government/Entrepreneur.
4. Environment Certificate shall be obtained by the Government before the start of such project.
5. The work of the project shall be undertaken where rehabilitation is not required as per conditions.
6. The work of land acquisition is presently done through Government department. Acquisition of land for the above project also will be done by Govt.
7. It is proposed that the capability of the Entrepreneur shall be checked as per prevailing rules.

2.0 Risk of the Entrepreneur:

1. Availability of the water under project shall be based on the principles and data available with the Irrigation Department i.e. the rain fall, flood study, yield of the dam etc. However, the right to changes is granted to the Entrepreneur in case the water yield is not as per the estimates.
2. Water charges shall be levied as per prevailing rates to the benefisheries of the project and the water users' organizations. Increase in the water levy can only be done after discussion with beneficiaries and shall be limited to 10%. The provision for this will be included in the tender documents.

3. In case permission is granted to any new upstream project, the statistical data pertaining to it shall be included in the documentation, and its prevailing use shall be kept unchanged.
4. Proportion and use of water shall continue as per prevailing mode and convention . In case any changes are to be made in the future, they will be decided by discussing the same.
5. No concession shall be given to the Entrepreneur in the events such as earthquake, fire, flood, violent storm etc.
6. No concession shall be extended to the entrepreneur for taxation purposes.
7. No economic concession shall be granted to the entrepreneur even in the case of failure of availability of water as per the project estimates.

3.0 Concessions to Entrepreneur:

1. An amendment is proposed in the law to give right to recover water tax to the Entrepreneur. Accordingly, the contractor will be awarded rights to recover water tax.
2. Royalty should not be charged to the Entrepreneur/Coop. Institutions on the use of material removed from the land. This right is granted with a view that the ultimate owner of the project is the Government itself.
3. All rights regarding fisheries and tourism in respect of such project will remain with Entrepreneur.
4. The land acquired by Govt. for the construction of project will be given on lease with nominal fee to the Entrepreneur on long term basis and he will be allowed to take economic benefits from the project land.
5. Adequate provision will be made in the tender documents for the loss, which the entrepreneur may incur on the investment made by him by calamities that are beyond his control.

4.0 Commercial Aspects

1. It is proposed to amend the law to give powers to the entrepreneur to recover the water tax. Accordingly the same powers will be given to Entrepreneur/Coop. institutions.

2. Lease of the land acquired for project will depend on investment made by Entrepreneur and if the entrepreneur fails to recover returns properly, period of lease will be extended and for that purpose and provision will be made in the tender documents.

5.0 Specifications

1. Indian/International Standard specifications will be followed for the construction of the projects. Generally the Entrepreneur shall use the prevailing standards for construction of such projects. Responsibility of the security of the project shall remain with the Entrepreneur.

6.0 Concession in the taxes:

1. Concessions decided by the Central /State Government from time to time shall be applicable to the Entrepreneur. Similarly, sales tax applicable to Govt. work on concessional rate shall be applied to the entrepreneur.
2. Royalty on the material from the mines used by entrepreneur at time of the project work shall be exempted as the Government is the ultimate owner of the project, and such facility shall be given to the entrepreneur as incentive.
3. Service Tax shall not be applicable to such Entrepreneur.
4. Concession in the octroi and municipal taxes shall be given to the entrepreneur
5. If the entrepreneur needs to import some machineries for this work, excise duty shall be waived off on such machineries.