



GOVERNMENT OF KERALA
Abstract

Kerala Infrastructure Investment Fund Board (KIIFB) – Tripartite Agreement among Special Purpose Vehicle (SPV), Public Agency and KIIFB – Procedure and Format – Sanctioned - Orders issued.

FINANCE (INFRASTRUCTURE) DEPARTMENT

G.O (MS) No.306/2017/Fin

Dated, Thiruvananthapuram, 22/06/2017

Read: - Kerala Infrastructure Investment Fund Act 1999 as amended vide the Kerala Infrastructure Investment Fund (Amendment) Act, 2016

ORDER

The Board of KIIFB chaired by the Hon'ble Chief Minister has accorded approval for the implementation of various infrastructure projects in the State and the projects are to be implemented in due course. In pursuance of Section 6A of the Kerala Infrastructure Investment Fund Act read above and for the commencement of disbursement of funds by KIIFB, it is considered that a Tripartite Agreement shall be executed among the Special Purpose Vehicle (SPV) entrusted with the task of implementing the approved project, the Public Agency issuing the administrative sanction and KIIFB to ensure effective time-bound implementation, fund flow, etc.

Hence Government are pleased to order that there shall be a Tripartite Agreement amongst the Special Purpose Vehicle (SPV) entrusted with the task of implementing the approved project, the Public Agency issuing the administrative sanction and KIIFB with respect to all infrastructure projects implemented in the public sector mode through KIIFB funding. The Tripartite Agreement shall be governed by the following procedure:-

- (i) Normally, there will be only one Tripartite Agreement for each main project declared in the relevant budget speech or proposed by Government. Each Tripartite Agreement shall cover a set of projects implemented through a specific SPV, for which Administrative Sanctions have been issued by Government. The details of the sub-projects thereof will be added as Schedules to the Tripartite Agreement.

- (ii) Where there is more than one SPV implementing sub-projects/components of a main project, there will be separate Tripartite Agreements in respect of each SPV and the details of sub-projects/components of the main project implemented by such SPVs will be added as Schedules to the respective Tripartite Agreement.
- (iii) The Schedules will form an integral part of the Tripartite Agreement and shall be duly signed by the parties to the Tripartite Agreement.
- (iv) The Tripartite Agreement will be executed on issuance of the Administrative Sanction by Government and Schedules pertaining to the sub-projects thereof will be added to the respective Tripartite Agreement pursuant to issuing of the relevant sanction proceedings by KIIFB.
- (v) The draft of the Tripartite Agreement will be prepared by KIIFB incorporating the specific project details, schedules and other required details. This draft will be finalized at a meeting of the parties to the agreement, convened by the Chief Executive Officer, KIIFB.
- (vi) Fair copy of the Tripartite Agreement will be taken by KIIFB in Stamp Paper of appropriate value for signing and executing by the authorized signatories of the SPV, the Public Agency and KIIFB. After execution, a certified copy each of the same will be provided to the authorized signatories of the SPV and the Public Agency. The original agreement will be retained by KIIFB.
- (vii) The SPV shall obtain the approval of its Governing Body/Board of Directors/Executive Committee as the case may be, to enter into the Tripartite Agreement. To save time, the SPV may obtain this approval by circulation or by ratification.
- (viii) The Chief Executive Officer of the SPV, the Secretary/Head of Department of the Public Agency and Chief Executive Officer, KIIFB will be the authorized signatories. If for any administrative reason, any of the parties is compelled to authorise a signatory in lieu, there shall be an explicit Board Resolution/Order/Government Order as the case may be sanctioning such substitution.

- (ix) The format of the Tripartite Agreement will be as given in the Annexure.
- (x) In cases where funding has been sought for implementing projects identified by KIIFB as revenue generating projects or in cases where the Public Agency is able to generate savings on account of implementation of the project for which funding was provided by KIIFB, the Public Agency and KIIFB shall enter into a Repayment Agreement laying down the terms and conditions for repaying the financial assistance availed from KIIFB. The repayment agreement shall be entered into before the release of 40% of the project cost by KIIFB. The Repayment Agreement shall specify the mode and manner of effecting such payments to KIIFB including provisions for escrow mechanism, direct remittance, etc.as the case may be.

(By Order of the Governor)
Dr. K.M. ABRAHAM, CFA, IAS
Additional Chief Secretary

To,

The Principal Accountant General (A&E), Kerala, Thiruvananthapuram
The Principal Accountant General (G&SSA), Kerala, Thiruvananthapuram
The Accountant General (E&RSA), Kerala, Thiruvananthapuram
The Secretaries to Government concerned
The Heads of Departments concerned
The CEOs of SPVs concerned.
The CEO, KIIFB
Stock file/Office Copy

Forwarded/By Order

Section Officer

TRIPARTITE AGREEMENT

AMONGST

SPECIAL PURPOSE VEHICLE (Implementing Agency)

AND

PUBLIC AGENCY

AND

KERALA INFRASTRUCTURE INVESTMENT FUND BOARD

This TRIPARTITE AGREEMENT (hereinafter referred to as the “Tripartite Agreement”) is

made this ___ day of _____ 201_

BY AND AMONGST

----- (name of the SPV)----- being the Special Purpose Vehicle implementing the project (hereinafter referred to as the ‘SPV’ which expression shall unless it be repugnant to the subject or context thereof, include its successors and assigns) represented by Chief Executive Officer/Authorised Signatory of the FIRST PART

AND

----- (name of the AD/Public Agency) -----being the Government Department/Public Agency issuing the administrative sanction (hereinafter referred to as the ‘Public Agency’ which expression shall unless it be repugnant to the subject or context thereof, include its successors and assigns) represented by Secretary of the SECOND PART

AND

Kerala Infrastructure Investment Fund Board being the Funding Agency (hereinafter referred to as ‘KIIFB’ which expression shall unless it be repugnant to the subject or context thereof, include its successors and assigns) represented by the Chief Executive Officer, KIIFB, of the THIRD PART.

The Special Purpose Vehicle, the Public Agency and KIIFB are hereinafter also referred to individually as “Party” and collectively as “Parties”.

WHEREAS the **State Government** has vide administrative sanction(s) provided in Schedule I accorded sanction for projects listed out in Schedule II (all the projects referred to in Schedule 2 shall be collectively preferred to as “PROJECTS”)

AND WHEREAS, SECOND PART seeks financial assistance from THIRD PART for THE PROJECTS to be implemented through FIRST PART;

AND WHEREAS, SECOND PART has assigned the responsibility of implementing THE PROJECTS to the FIRST PART and the FIRST PART shall enter into CONTRACT(s) (hereinafter referred to as “CONTRACT”) with the CONTRACTOR(S) for executing THE PROJECTS.

NOW, THEREFORE, IT IS HEREBY AGREED amongst the Parties as follows:-

1. This **Tripartite Agreement** signed between (a) SPV for THE PROJECT, (b) the Public Agency and (c) KIIFB shall be implemented by the Parties in letter and spirit.
2. This **Tripartite Agreement** shall be read in accordance with the provisions of the Kerala Infrastructure Investment Fund Act, 1999.
3. The FIRST PART shall execute THE PROJECTS through a CONTRACTOR selected through a competitive process following the rules and regulations prescribed in this regard by the Government of Kerala or Government of India, as applicable.
4. In cases where funding has been sought for implementing revenue generating projects or in cases where SECOND PART is able to generate savings on account of implementation of any project provided in Schedule II , the SECOND PART and THIRD PART shall enter into a REPAYMENT AGREEMENT laying down the terms and conditions for repaying the financial assistance availed from the Third Part. The repayment agreement shall be entered into before the release of 40% of the payments

towards the said project. The Repayment agreement shall specify the mode and manner of effecting such payments to the THIRD PART including provisions for escrow mechanism, direct remittance etc. as the case may be.

5. All bills raised by the CONTRACTOR towards the implementation of THE PROJECTS shall be duly scrutinised by the FIRST PART and authorised for payment to the THIRD PART through an invoice showing separately the payment due to the CONTRACTOR and statutory deductions /payments to be made. After verifying the invoice, the THIRD PART shall release the payment through a direct payment transfer mechanism to the designated bank/treasury accounts of the CONTRACTOR(S) registered with the THIRD PART by the FIRST PART. Any discrepancy noticed/pointed out in the claims shall be duly rectified by the FIRST PART before release of payment by the THIRD PART, except as decided otherwise by the THIRD PART. The statutory deduction/payments shall be transferred to the FIRST PART and the FIRST PART shall be liable for timely remittance of the such deductions/payments to the respective authorities.
6. The FIRST PART shall be ultimately responsible for implementation of THE PROJECTS including monitoring the progress, ensuring the quality and timely completion, as stipulated in the Detailed Project Report.
7. The responsibility for the operation and maintenance of THE PROJECTS upon the completion of its implementation shall be agreed upon between SECOND PART and FIRST Part/Agency identified by SECOND PART and based on an agreement entered between the parties based on the provisions of the Kerala Infrastructure Investment Fund Act, 1999.
8. The FIRST PART shall furnish to SECOND PART and THIRD PART a quarterly progress report of THE PROJECTS in the prescribed format and mode. THIRD PART shall provide the necessary online project management software platform for the FIRST PART to enter the detailed project tasks and timelines for execution and completion of THE PROJECTS. Activity-wise progress shall be assessed in a bi-weekly period and updated in the software platform by the FIRST PART. Any deviations in scope, design, agreement rates, quantities and terms and conditions of the execution of the

CONTRACT shall be identified and specifically informed to the THIRD PART by the FIRST PART. If there is any additional requirement of funding due to any deviation as stated above; such additional funds shall be provided by the THIRD PART, with the approval of the SECOND PART, only if the deviations were not due to any lapse attributable to the FIRST PART.

9. The FIRST PART shall indemnify the THIRD PART against any claim arising out of breach of any provision of the CONTRACT between FIRST PART and CONTRACTOR.
10. The FIRST PART shall also ensure that adequate provisions in the CONTRACT for resolution of disputes either through arbitration or a court of law. If there is any additional requirement of funding arising out of arbitration awards, court decrees or related to settlement of disputes related to the CONTRACT; additional funds shall be provided by the THIRD PART with the approval of the SECOND PART if the deviations were not due to any lapse attributable to the FIRST PART.
11. THIRD PART shall monitor and review implementation of THE PROJECTS. For this purpose, the Inspection Authority constituted under Section 17A of the Kerala Infrastructure Investment Fund Act, 1999 shall be competent to inspect THE PROJECT or documents pertaining to THE PROJECTS. If any irregularity is observed, the THIRD PART shall initiate appropriate corrective action which shall be binding on the FIRST PART and SECOND PART.
12. The FIRST PART shall identify payment milestones for release of payment. The physical milestones corresponding to payment milestones have to be completed satisfactorily for release of payment. The FIRST PART shall have adequate conditions in the CONTRACT to fulfil the above condition as a pre-requisite for effecting periodical payments against the bills. Any subsequent changes or deviations from the milestones for payments may be permitted by the FIRST PART only after satisfying itself that such changes or deviations in the payment milestones are reasonable and expedient to the completion of THE PROJECTS. The Third Part shall reserve the right to direct changes to the milestones, if required, and such changes, if directed by the THIRD PART, shall be carried out by the First Part.

13. FIRST PART shall submit through SECOND PART to THIRD PART, a COMPLETION REPORT on the completion of implementation of individual projects forming part of Schedule II.

14. The SECOND PART through FIRST PART shall ensure that THE PROJECTS are completed within stipulated period. If there is any additional requirement of funding due to cost over-run; additional funds shall be provided by the THIRD PART with the approval of the SECOND PART if the extension of time and cost over-run was not due to any lapse of the FIRST PART.

15. THIRD PART shall retain the right to inspect THE PROJECT till the extinguishment of the Defect Liability Period or as otherwise specified in any agreement between the First Part and the Third Part.

16. In the event the FIRST PART fails to perform the duties as envisaged as per the agreement, the liabilities shall be recovered from centage charges and incentives payable.

17. TERMINATION OF AGREEMENT

- a. This agreement shall stand terminated at the end of Defects Liability Period or vesting of THE PROJECTS with public agency, whichever is later, after ensuring that obligations of parties under this agreement are complied.
- b. The agreement may also be terminated if the FIRST PART has failed to comply with directions for rectification or corrective action of the lapses detected by the SECOND PART or THIRD PART. A notice period of not less than three months shall be given to the FIRST PART before initiating the termination process.
- c. The agreement may further also be terminated by mutual agreement between the parties.

IN WITNESS WHEREOF, all the Parties have put their hands on these presents of the **Tripartite Agreement** in the presence of witnesses.

1. Signed by Sri.....

Chief Executive Officer/Authorised Signatory for and on behalf of SPV (FIRST PART)

2. Signed by Sri.....

Secretary of the Administrative Department for and on behalf of Public Agency

(SECOND PART)

3. Signed by Sri.....

Chief Executive Officer for and on behalf of KIIFB (THIRD PART)

WITNESSES:

1.

2.

3.

Schedule I

(Administrative sanctions granted for projects forming part of Schedule II shall be annexed as part of this schedule. List shall be updated and signed every time a new administrative sanction is include as part of this schedule.)

| | <u>Details of Administrative Sanctions</u> |
|-----------|---|
| 1. | |
| 2. | |
| 3. | |

SIGNATORIES:

1. For SPV _____ (FIRST PART)
2. For Public Agency _____ (SECOND PART)
3. For _____ (KIIFB) (THIRD PART)

Schedule II

TRIPARTITE AGREEMENT No. _____ Dated _____

Project/Subproject

| | | |
|----|---|--|
| 1. | Name of the Project/sub-project with Code No. | |
| 2. | | |
| 3. | Project Outlay as per the approved DPR in Rs. Crore | |
| 4. | Project Outlay as per Technical Sanction in Rs. Crore with Reference No. and date | |
| 5. | Date of Approval by KIIF Board with reference | |
| 6. | Proceedings No. and Date | |
| 7. | Funding approved by KIIFB | |
| 8. | Date of commencement (Date of signing this Schedule) | |

The FIRST PART hereby concur that the project shall be executed as per the Approved Detailed Project Report and Technical Sanction accorded.

SIGNATORIES:

4. For SPV _____ (FIRST PART)
5. For Public Agency _____ (SECOND PART)
6. For _____ (KIIFB) (THIRD PART)