

Andhra Pradesh Infrastructure (Transparency through Judicial Preview) Act, 2019

ANDHRA PRADESH

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Act 34 of 2019

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Andhra Pradesh Infrastructure (Transparency through Judicial Preview) Act, 2019(Act No. 34 of 2019)Last Updated 13th January, 2020[Dated 20.08.2019]An Act To Bring Transparency In The Infrastructure Bidding Process In The State Through Judicial Preview Thereby To Ensure Optimum Utilization of Public Resources And For Matters Connected Therewith And Incidental Thereto.Be it enacted by the Legislature of the State of Andhra Pradesh in the Seventieth year of the Republic of India, as follows: -Chapter-I Preliminary

1. Short title, extent, commencement and application.

(1)This Act may be called the Andhra Pradesh Infrastructure (Transparency through Judicial Preview) Act, 2019.(2)It extends to the whole of the State of Andhra Pradesh.(3)It shall come into force on such date as the Government may, by notification, appoint.(4)It shall apply to all Infrastructure Projects implemented in the Sectors enumerated in Schedule Appended to the Act and to such other sectors as may be notified by the Government under the Act from time to time.

2. Definitions.

- In this Act, unless the context otherwise requires, -(1)"Act" means the Andhra Pradesh Infrastructure (Transparency through Judicial Preview) Act, 2019;(2)"Bidder" means any entity including any Bidding Consortium, who has submitted a proposal to undertake an Infrastructure Project under Government Departments, Andhra Pradesh Public undertakings, Joint Ventures (JV), Special Purpose Vehicles (SPV) of Government of Andhra Pradesh and Public Private Partnership;(3)"Bidding Consortium" means if the proposal for the Project is made jointly by more than one entity, then such group of entities shall be referred to as a Bidding Consortium;(4)"Company" means any entity incorporated by memorandum of association under

the Companies Act, 1956 (Central Act No. 1 of 1956) or incorporated under any other statute or deemed to be incorporated under the laws of India or the laws of any other country of the world;(5)"Construction" means any construction, reconstruction, rehabilitation, improvement, expansion, addition, alteration and related works and activities including supply of any equipment, materials, labour and services related to build or rehabilitate any Infrastructure Project comprising of physical structures or systems or commodities or for utilization of resources or provision of services;(6)"Developer" means any Private Sector Participant who has entered into a contract for the infrastructure Project with the Government or Government Agency or Local Authority through Public Private Partnership method;(7)"Government" means the Government of Andhra Pradesh;(8)"Government Agency" means any department of the Government or any corporation, Agency, Society, Trust or body owned or controlled by the Government by reason of the Government holding not less than 51 % of paid-up share capital in such corporation or body;(9)"Government Company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Andhra Pradesh Government, or partly by the Andhra Pradesh Government and includes a company which is a subsidiary of a Government company as defined;(10)"Hon'ble Judge" means person who is or has been Hon'ble Judge of the High Court;(11)"Infrastructure" means public works relating to infrastructure for utilizing the natural resources and providing services by either public works of physical structure or systems for facilities or commodities or utilization of resources or provision of services through any method viz, engineering procurement construction method, or rate contract procurement;(12)"Infrastructure Project" means any Project requiring a Investment of value Rupees 100 Crore and above as may be prescribed by the Government from time to time undertaken by Andhra Pradesh Government, Andhra Pradesh Public Undertakings, Joint Ventures (JV), Special Purpose Vehicle (SPV) of the Government of Andhra Pradesh and Public Private Partnership (PPP);(13)"Investment" means preliminary and pre-operative expenses, capital expenditure, lease on land and equipment, interest during construction, administrative expenses, all operating and maintenance expenses including expenses incurred on recovery of User Levies;(14)"Judicial preview" means a Preview mechanism constituted under Section 3 of this Act, by a person who has been or is a Hon'ble Judge of the High Court;(15)"Lead Consortium Member" means in case of a Bidding consortium, that consortium member vested with the prime responsibility of developing a Project, holding not less than 26% equity stake in the Bidding Consortium and also holding the highest equity stake amongst all other consortium members;(16)"Local Authority" means any Municipal Corporation or Municipal Council or any Panchayat or any other statutory body formed, elected or appointed for local self-Government;(17)"Local Laws" means laws other than central laws and applicable to the State;(18)"Notification" means a notification published in the Andhra Pradesh Gazette and the word "notified" shall be construed accordingly;(19)"Person" shall include any company or association or body of individuals, whether incorporated or not;(20)"Prioritised Project" means any Project, which is notified by the Government as a prioritised project under the Act;(21)"Prescribed" means Prescribed by rules or Regulations made under this Act;(22)"Public Private Partnership" means Investment by Private Sector Participant in an infrastructure Project of the Government Agency or the Local Authority in the State;(23)"Regulations" means regulations made under this Act;(24)"Responsive Bid" means a bid from an eligible Bidder which complies with all the requirements prescribed by the tender documents or other documents as the case may be;(25)"Schedule" means a Schedule appended to the Act;(26)"Sectors" means sectors as notified

under Schedule of the Act and as may be notified from time to time by the Government;(27)"State" means the State of Andhra Pradesh;(28)"State Support" means grant by the State of any administrative support, asset based support, foregoing revenue benefits support, undertaking contingent liabilities by providing guarantees or financial support to the Developer in Public Private Partnership projects;(29)"Unsolicited or Suo-Motu Proposal" means a proposal in respect of a Project not already initiated by the Government or Government Agency or Local Authority and which proposal is submitted by any Private Sector Participant to the Government Agency or Local Authority in respect of any Infrastructure in the State supported by project specifications, technical, commercial and financial viability and prima facie evidence of the financial and technical ability of such Private Sector Participant to undertake such Project with full details of composition of the Private Sector Participant and his financial and business background;(30)"User Levies" means the right or authority granted to the Developer by the Government Agency or the Local Authority to recover Investment and fair return on Investment and includes toll, fee, charge or benefit by any name.

Chapter-II Constitution of Judicial Preview

3. Constitution of Judicial Preview.

- The Government may, by notification shall, -(i)Provide for undertaking Judicial preview, prior to inviting tenders, by a person who is or has been Hon'ble Judge of High Court, for all infrastructure projects including Public Private Partnership (PPP) projects of the value of Rupees 100 Crore and above to ensure conformity in procedure, rules and guidelines prescribed by State and Central Governments from time to time.(ii)Provide the Terms of Reference for the Judicial Preview and also specify the guidelines, rules as applicable from time to time, in the conduct of such preview.

4. Terms of engagement of Hon'ble members and staff.

(1)The Government shall provide necessary staff to the Hon'ble Judge as required to discharge his functions. The terms and conditions of engagement of the Hon'ble Judge shall be as prescribed from time to time.(2)The Government may provide relevant experts to the Hon'ble Judge as per empanelled list and the Honorarium and allowances of such experts, shall be as prescribed from time to time.(3)In case the Hon'ble Judge desires the assistance of persons of eminence, they may be engaged on case to case basis.

5. Functions of Judicial Preview Committee.

(1)The Government Agency or the Local Authority shall place before the Hon'ble Judge, all the tender related documents with regard to the Infrastructure projects of value of Rupees 100 crores and above.(2)The Hon'ble Judge may, suggest suitable modifications essential to achieve the object of transparency, to secure competition and equal opportunity.(3)For the purpose of identification of an infrastructure project of value Rupees 100 crore and above; any part so segregated or divided or tendered separately which form part of the original work shall deemed to be an integral part of such infrastructure project, necessitating preview.

Chapter-III Technical or Other Committees

6. Technical or other committees.

- The Government may, from time to time constitute such committees or Technical committees consisting of such members for performing such of its functions as may be provided for under regulations, if required for assistance to the Hon'ble Judge. Chapter-IV Recommendations

7. Recommendations by the Hon'ble Judge.

(1) The Hon'ble Judge shall place the tender related documents referred to for Judicial Preview by the concerned Government Agency or the Local Authority, in public domain for a week and invite suggestions. (2) Within 8 days of such publication, the tender document (s) shall be previewed. After due discussion with the Government/Local Body and due examination, the Hon'ble Judge may suggest such modifications as may be required, which will be binding on the Government. Chapter-V Miscellaneous

8. Control by Government.

- The Judicial Preview shall be done in exercise of powers and functions under the Act as prescribed in the rules notified from time to time by the Government for efficient administration and effective implementation of the Act.

9. Protection of Action Taken In Good Faith.

(1) No suit, claim or other legal proceedings shall lie against the Government or the staff or representatives of the Government in respect of anything which is in good faith done or intended to be done under the Act or any Rules or Regulations or orders made thereunder. (2) It shall be open to Hon'ble Judge to devise an appropriate procedure or mechanism to deal with scurrilous or malicious attempts to obstruct the process of preview, and thereafter.

10. Members and staff of Judicial Preview to be Public Servants.

- The Hon'ble Judge, Officer, person(s) employed for the judicial preview, provided for carrying out the objectives and purposes of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860).

11. Power to Remove Difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act or the rules, regulations, scheme or orders made hereunder, the State Government within two years from the date of enactment of this Act, may by notification in the Official Gazette, make such provision, not inconsistent with the provisions of this Act, as may be necessary or expedient for removing the difficulty. (2) All orders made under sub-section (1) shall, as soon as may be after they are made, be placed on the table of the Legislature of the State and shall be subject to such modification by way of

amendments as the Legislature of the State may make either in the same session or in the next session.

12. Delegation of Powers.

- The Government may, by notification, direct that any power exercisable by the Government under the Act shall be exercisable by an officer of the Government, subject to such terms as may be specified in such notification.

13. Act to override other State Laws.

(1) If any provision contained in this State Act is repugnant to any provision contained in the Central Act, the provision contained in the Central Act shall prevail and the provision contained in this State Act shall to that extent of repugnancy, be void. (2) The provisions of this Act are not derogatory to other enactments in force in State of Andhra Pradesh, but are supplementary to such enactments. If any provision of this Act is repugnant to the provisions of any State enactments, the provision of this Act will prevail. (3) From the date of commencement of this Act, the Government/Local Authority shall furnish the tender documents as specified for Judicial Preview. They shall also prepare and provide a list of experts required for the purpose (s) of Judicial Preview, from time to time. (4) The Government/Local Authority, shall assist the Judicial Preview in placing the documents in public domain and shall provide assistance to the Hon'ble Judge for quick and transparent disposal as envisaged in the Act. (5) The entire exercise for each tender shall be completed within 15 days.

14. Power to make regulations.

- The Government may make regulations consistent with the provisions of this Act to carry out the purposes of this Act.

15. Schedule amendment.

(1) The Government may, by notification, alter, add to or cancel any entries of the Schedule. (2) Where a notification has been issued under sub-section (1) there shall, unless the notification is in the meantime rescinded, be introduced in the Legislature of the State, as soon as may be, but in any case during the next session of the Legislature of the State following the date of the issue of the notification, a Bill on behalf of the Government, to give effect to the alteration, addition or cancellation, as the case may be, of the Schedule specified in the notification, and the notification shall cease to have effect when such Bill becomes law, whether with or without modifications, but without prejudice to the validity of anything previously done thereunder: Provided that if the notification under sub-section (1) is issued when the Legislature of the State is in session, such a Bill shall be introduced in the Legislature of the State during that session: Provided further that where for any reason a Bill as aforesaid does not become law within six months from the date of its introduction in the Legislative Assembly, the notification shall cease to have effect on the expiration of the said period of six months.

16. Power to Make Rules.

(1)The Government may by notification make Rules for carrying out all or any of the purposes of this Act.(2)Every rule made under this Act shall be, immediately after it is made be laid before the Legislature of the State if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following the Legislature of the State agrees in making any modifications in the rule or in the annulment of the rule, the rule shall from the date on which the modification or the annulment is notified, have effect only in such modified form or shall stand annulled as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

Schedule

(See section 2 (26))SectorsSectors enumerated below including PPP Projects

1. Roads (State Highways, Major Districts Roads, Other District Roads & Village Roads), Bridges and Bypasses

2. Health.

3. Land reclamation.

4. Canals, Dams, Tanks, Reservoirs.

5. Water supply, treatment and distribution.

6. Waste management.

7. Sewerage, drainage.

8. Public Markets.

9. Trade Fair, Convention, Exhibition and Cultural Centers.

10. Public Buildings.

- 11. Inland water transport.**
- 12. Gas and Gas works.**
- 13. Sports and recreation infrastructure, public gardens and parks.**
- 14. Real Estate.**
- 15. e-Governance Projects, IT Infrastructure.**
- 16. Urban Development through Joint development agreement and Joint Venture with Private Sector companies, consortium of companies.**
- 17. Telecommunication and Broadband Internet Services including provision of Fiber Grid, Wi-Fi Services etc.,**
- 18. Power-Generation, Transmission and Distribution including renewable (Solar & Wind) energy projects.**
- 19. Other Highways Projects including housing or other activities being an integral Part of the Highway Project.**
- 20. Transport Terminus and depots.**
- 21. Railway system including Urban transit Projects.**
- 22. Ports, Inland Ports.**
- 23. Airports including but not limited to logistic hubs and Free Trade Zones.**
- 24. Urban Development Projects including Smart City Projects.**
- 25. Educational Institutions.**