

The Maharashtra Infrastructure Development Enabling Authority Act, 2018

MAHARASHTRA

India

The Maharashtra Infrastructure Development Enabling Authority Act, 2018

Act 28 of 2018

- Published on 9 April 2018
- Commenced on 9 April 2018
- [This is the version of this document from 9 April 2018.]
- [Note: The original publication document is not available and this content could not be verified.]

The Maharashtra Infrastructure Development Enabling Authority Act, 2018(Maharashtra Act No. 28 of 2018)[Dated 9.4.2018.]An Act to provide for the establishment of the Maharashtra Infrastructure Development Enabling Authority, to regulate the process of submission and evaluation of unsolicited proposals, to promote and facilitate infrastructure projects in the State of Maharashtra including through Public Private Partnership and matters connected therewith or incidental thereto.Whereas, Both Houses of the State Legislature were not in session ;And Whereas, The Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law, for the establishment of the Maharashtra Infrastructure Development Enabling Authority, to regulate the process of submission and evaluation of unsolicited proposals, to promote and facilitate infrastructure projects in the State of Maharashtra including through Public Private Partnership; and matters connected therewith or incidental thereto ; and, therefore, promulgated the Maharashtra Infrastructure Development Enabling Authority Ordinance, 2018 (Maharashtra Ordinance VII of 2018), on the 23rd February 2018 ;And Whereas, it is expedient to replace the said Ordinance by an Act of the State Legislature ; it is hereby enacted in the Sixty-ninth Year of the Republic of India as follows :-

Chapter I Preliminary

1. Short title and commencement.

(1)This Act may be called the Maharashtra Infrastructure Development Enabling Authority Act, 2018.(2)It shall be deemed to have come into force on the 23rd February 2018.

2.

In this Act, unless the context otherwise requires, - (1) "Authority" means the Maharashtra Infrastructure Development Enabling Authority constituted under sub-section (1) section 3 ; (2) "Designated Officer" means the officer of the State Government appointed under sub-section (2) of section 5 ; (3) "Government" or "State Government" means the Government of Maharashtra; (4) "Government Agency" means any instrumentality of the State Government; (5) "Government Authority" means the Authorities established by the State Government; (6) "Infrastructure Project" or "Project" means a Project in the Infrastructure Sector, for any development, re-development or restructuring of an existing Infrastructure Projects, or any under construction Infrastructure Projects, including those have been awarded prior to the commencement of the Act by any Government Authority or Government Agency or Local Authority or Government Company; or development, operation and maintenance ; or operation and maintenance of any infrastructure facility in the Infrastructure Sector, for the purposes of creation of infrastructure asset, or delivery of public services and shall include a facility of similar nature and substantial expansion thereof; (7) "Infrastructure Sector" means the Infrastructure Sectors prescribed in rules; (8) "innovative financing" means the financing at the rate below Repo Rate declared by the Reserved Bank of India, from time to time; (9) "Local Authority" - (i) in relation to the Zilla Parishad means the Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayats Samitis Act, 1961 (Maharashtra V of 1962); (ii) in relation to the Municipal Corporation means the Municipal Corporations constituted under the Mumbai Municipal Corporation Act (III of 1888) or, as the case may be, the Maharashtra Municipal Corporations Act (LIX of 1949); (iii) in relation to the Municipal Council, Nagar Panchayat or Industrial Township means the Municipal Council, Nagar Panchayat or Industrial Township, as the case may be, constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Maharashtra XL of 1965); or (iv) any other authority treated as Local Authority under any other law for the time being in force; (10) "Maharashtra Infrastructure Projects Policy" means the policy declared by the State Government, from time to time, for promotion and development of Infrastructure Projects, including Public Private Partnerships in Infrastructure Sectors; (11) "Original Project Proponent" means a person who has submitted the Unsolicited Proposal to the Authority and declared as Original Project Proponent under sub-section (3) of section 8 ; (12) "Person" includes any Private Sector Participant or Public Sector Participant, company or body corporate or association or body of individuals, whether incorporated or not ; (13) "prescribed" means prescribed by rules made under the Act ; (14) "Private Sector Participant" means any Person other than a Public Sector Participant; (15) "Project Entrepreneur" means the Person to whom the project has been assigned after final bid and declared as Project Entrepreneur by the Authority under sub-section (3) of section 14 ; (16) "Public Private Partnerships" means a mode of procurement of Infrastructure Projects through a combination of public and private participation; (17) "Public Sector Participant" means and includes, - (a) Central Government, State Government, Government Agency, Government Authority, Government Company or Local Authority; or (b) any joint venture by any Public Sector Participant with Private Sector Participant; (18) "regulations" means regulations made by the Authority under the Act ; (19) "rules" means rules made under the Act ; (20) "Transaction Advisor" means a person appointed by the Government Authority, Government Agency or Local Authority under sub-section (1) of section 18 ; (21) "Unsolicited Proposals" means the proposals in

Infrastructure Sectors, for promotion and development of Infrastructure Projects as per the Maharashtra Infrastructure Projects Policy of the Government with innovative ideas, new concepts, new or modern technologies, submitted by any Person under sub-section (1) of section 6.

Chapter II

Establishment and Composition of Authority

3. Establishment of Maharashtra Infrastructure Development Enabling Authority.

(1)As soon as may be, after the commencement of the Act, the State Government shall, by notification in the Official Gazette, establish a Authority to be called the Maharashtra Infrastructure Development Enabling Authority, to exercise the powers conferred on it and perform the functions assigned to it under the Act.(2)The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of the Act, to acquire, hold and dispose of property, both moveable and immoveable, to do all things incidental and necessary for the purposes of the Act, and to contract, and shall, by name sue or be sued.(3)The head office of the Authority shall be at such place as the State Government may specify.

4. Composition of Authority.

(1)The Authority shall consist of the Chief Secretary and Additional Chief Secretary, Principal Secretary or Secretary, as the case may be, of the Departments of the State Government, as may be specified by the Government, by notification in the Official Gazette, from time to time.(2)The Government may appoint such other expert Members in such field as may be prescribed.(3)The Chief Secretary shall be the Chairperson and Secretaries of the Departments shall be the ex officio Members of the Authority.(4)The Secretary of the concerned Department, to which the project pertains shall act as the Member-Secretary of the Authority.

5. Powers and functions of Authority.

(1)The Authority shall exercise the following powers and perform the following functions, namely :- (a)to receive all proposals and certify whether the project qualifies to be the Infrastructure Project, keeping in mind the overall objectives of the State Government and the provisions of the Maharashtra Infrastructure Projects Policy;(b)to receive, consider and process the proposals for development of the Infrastructure Projects and to recognize and grant the status of 'Original Project Proponent' or 'Project Entrepreneur', as the case may be;(c)to facilitate co-ordination between the Government Authority, Government Agency, Local Authority or the concerned Department of the State Government, and the Original Project Proponent or Project Entrepreneur, as the case may be;(d)to promote the competitive bidding of the Infrastructure Projects;(e)to select Project Entrepreneur for the implementation of Infrastructure Projects by making appropriate recommendations to the Government Authority, Government Agency, Local Authority or the State

Government;(f)to identify and leverage inter-sectorial or inter-project linkages;(g)to recommend and approve standard form of documents relating to the Infrastructure Projects;(h)to identify and encourage use of new concepts, new technologies, intellectual property rights in the Infrastructure Projects;(i)to resolve issues relating to the approvals of the Infrastructure Projects;(j)to recommend time limit for approval of Infrastructure Projects;(k)to periodically review the status of the Infrastructure Projects;(l)to approve sectorial policies and model contract principles;(m)to discharge such other functions as may be prescribed.(2)The Authority may appoint officers of the Government as the Designated Officers for the purposes of implementing the provisions of the Act.(3)The Authority may in respect of the specific Infrastructure Project, delegate its functions to the concerned Department of the Government or Government Authority, the Government Agency or the Local Authority, as the case may be, in such manner as may be prescribed.(4)The Authority shall advise the State Government on all or any of the following matters, namely :-(a)formulation of the Maharashtra Infrastructure Projects Policy;(b)promotion and use of new concepts, new ideas, innovation, efficiency and economy in harnessing the proposals, awarding contracts and overall development of Infrastructure Projects in the State;(c)promotion of investment in the Public Private Partnerships;(d)any other matter referred to the Authority by the State Government.(5)The Authority shall ensure transparency while exercising its powers and discharging its functions.

Chapter III

Infrastructure Projects Delivery Process

6. Procedure for Infrastructure Projects delivery.

(1)Any Person desirous of developing any Infrastructure Project in the Infrastructure Sectors, shall submit the proposal to the Authority in such form, in such manner, with such documents and with such details along with such fee as may be prescribed.(2)On receipt of the proposal under sub-section (1), the Authority shall, on the basis of the information furnished to it, ascertain whether such proposal is, prima facie, a Unsolicited Proposal and qualifies to certify as the Infrastructure Project specified in the rules and is in consonance with the overall objectives of the State Government and to the provisions of the Maharashtra Infrastructure Projects Policy.(3)The Authority shall not qualify such proposal as Infrastructure Project, if such proposal,-(a)contravenes any existing laws;(b)results in the creation of a monopoly;(c)is less than the value of the Infrastructure Project as prescribed ;(d)is out of the Infrastructure Sectors or sub-sectors as prescribed ;(e)requires viability gap funding ; or(f)does not involve use of modern technology, or new concept or innovative financing.(4)If the Authority is satisfied that the proposal is in consonance with the overall objectives of the State Government and the provisions of the Maharashtra Infrastructure Projects Policy, the Authority may grant a Certificate to the Person in the prescribed format. If the proposal is not approved, the Authority shall communicate its decision to such Person with reasons.(5)If the Authority is satisfied that the proposal submitted by the Person under sub-section (1) is adequate to declare as the 'Original Project Proponent', the Authority may, with the prior approval of the Government, declare such Person as the 'Original Project Proponent' under clause (b) of sub-section (3) of section 8, for such Infrastructure Project.(6)The Authority shall take the decision within such period as may be prescribed.(7)When

the Certificate is granted under sub-section (4), the Authority shall seek further information as may be prescribed, pertaining to such proposal from such Person. Such Person shall submit the information online to the Authority in such manner and within such period as may be prescribed.

7. Grounds of rejection of proposal.

- The Authority may reject the proposal if, - (i) such proposal does not fulfil the eligibility criteria provided under section 13; or (ii) such Person fails to furnish the appropriate information or documents or the clarifications sought by the Authority, within the time communicated to it; or (iii) the information or documents submitted by such Person are not in accordance with the prescribed Forms; or (iv) the contents or information or documents submitted are incomplete or deficient or found to be false; or (v) the Person has failed to make payment of the fees in the manner as may be prescribed; or (vi) any other grounds as may be prescribed.

8. Declaration of Original Project Proponent.

(1) The Authority shall within prescribed period, from the date of receipt of the information sought under sub-section (7) of section 6, ascertain as to whether the proposal submitted is an Unsolicited Proposal or not and as per the Maharashtra Infrastructure Projects Policy. The Authority shall while ascertaining the said proposal consider the following parameters :- (a) whether such proposal addresses any public need; (b) whether there is any on-going process (Public Private Partnership or otherwise) that is addressing the same public need; (c) whether such proposal envisages substantial new technology or innovation or contains proprietary intellectual property rights or innovative financing or financial structuring for Infrastructure Project of a value not less than the value prescribed by the State Government, from time to time, in respect of the Infrastructure Project; which in turn, - (i) enables reduction of project cost; or (ii) reduces project completion time; or (iii) enhances the quality of infrastructure; or (iv) substantially adds value in respect of incremental, emergent or revolutionary changes in products, services and processes; or (v) substantially reduces financial burden on the State Government or Government Authority or Government Agency or Local Authority. (2) The Authority shall also verify whether the proposal falls within the purview of any Government Authority or Government Agency or Local Authority. (3) If the Authority is satisfied that, - (a) the proposal is as per the provisions of the Act and the rules made thereunder and as per the Maharashtra Infrastructure Projects Policy; and (b) the proposal submitted by the Person under sub-section (1) of section 6, is adequate to declare such Person as the 'Original Project Proponent', the Authority may, with the approval of the Government, declare such Person as an 'Original Project Proponent' for such Infrastructure Project. (4) In the event, when the Authority decides that the proposal is not, - (i) an Unsolicited Proposal; (ii) as per the Maharashtra Infrastructure Projects Policy; and (iii) in accordance with the rules made under the Act, the Authority shall communicate its decision to such Person along with reasons thereof. (5) The declaration made by the Authority under sub-section (3), as the Original Project Proponent of the Infrastructure Project shall be valid for a period of one year.

9. Rights of Original Project Proponent.

(1) If the Original Project Proponent agrees to the terms and conditions for such Infrastructure Project, the Original Project Proponent shall enter into an Agreement in such manner as may be prescribed which inter alia, shall determine the obligations of the Original Project Proponent, representations and penalties, liquidated damages, liability, nature of concessions and benefits to be granted, etc. to the Original Project Proponent. (2) The nature of concessions and benefits to be granted to the Original Project Proponent shall be such as may be prescribed.

10. Submission of details of Project.

(1) The Authority shall direct the Original Project Proponent to submit such Detailed Project Report (DPR), and other details within such period as may be prescribed. (2) If the Original Project Proponent fails to submit the details of Project within the prescribed period, the Original Project Proponent will have no right over the said Project.

11. Publication of provisional declaration of Project.

(1) The Authority shall, with the approval of the Government, publish the information about the provisional declaration of the Original Project Proponent for such Infrastructure Project, on the website designated by the Authority and also simultaneously in the newspapers (one in English and one in Marathi) having circulation in the area, for calling objections from the affected persons, in the manner prescribed. (2) If objections are received from the affected persons, the Authority shall hear such objections in such manner as may be prescribed and shall take the final decision on the said Project.

12. Competitive bids.

(1) The Authority shall direct the concerned Department to call the bid of the approved Project. (2) The procedure of the bid, notice period, technical aspects and the terms and conditions for approval of such Project shall be such as may be prescribed.

13. Eligibility criteria.

(1) The eligibility criteria for submission of proposal by any Person under sub-section (1) of section 6 or competitive bidder for the Project shall be such as may be prescribed. (2) The Person who fulfils the criteria specified in sub-section (1) shall be eligible to submit the proposal or eligible for the bid of the Project.

14. Assignment of Project.

(1) If in the bid, - (a) the proposal of the Original Project Proponent is in deviation of 10 per cent. or more, compared to the other competitive bids received, the Authority shall grant the Project to the

best competitive bidder and thereupon the Original Project Proponent will lose its status as Original Project Proponent of the said Project.(b)If the proposal of the Original Project Proponent has deviation of less than 10 per cent. compared to the other bidders, the Authority shall give opportunity to the Original Project Proponent to match his proposal with the proposal selected in bid.(2)If the Project is not assigned to the Original Project Proponent, he shall be entitled to reimbursement of the cost of the Detailed Project Report as prescribed:Provided that, the Original Project Proponent shall be entitled to reimbursement of the cost of the Detailed Project Report only if, the Project is implemented:Provided further that, the Original Project Proponent shall not be entitled to reimburse the cost of the Detailed Project Report, if he unilaterally withdraws the proposal.(3)The Person to whom the Project has been assigned, the Authority shall, with the approval of the Government, declare such Person as the Project Entrepreneur of the Project.(4)The procedural details of assignment of the Project to the Project Entrepreneur shall be such as may be prescribed.

15. Agreement with Project Entrepreneur.

(1)If the Authority and the Project Entrepreneur agrees to the terms and conditions for such Infrastructure Project, the concerned Government Authority or Government Agency or Local Authority may enter into Concession Agreement with the Project Entrepreneur as prescribed which inter alia, shall determine the obligations of the Project Entrepreneur, representations and warranties, penalties, liquidated damages, liabilities, nature of concession and benefits to be granted, etc.(2)It shall be binding on the Project Entrepreneur to complete the Project within the period as per the agreement.

16. Nature of Concession Agreement.

(1)The Authority may prescribe the model Concession Agreement for the purposes of the Act.(2)The following Concession Agreement with their variations and combinations may be made,-(a)design-build-operate-and-transfer ; or(b)design-build-own-operate-and-transfer ; or(c)design-build-own-and-operate ; or(d)develop-operate-and-transfer ; or(e)any other Concession Agreement as may be prescribed.(3)The details of the Concession Agreement specified in sub-section (1) shall be as prescribed in the regulations.

17. Implementation of Project.

(1)The concerned Government Authority or Government Agency or Local Authority, identified by the Authority shall be responsible for implementation of the Project either on its own or through any agency.(2)The Authority shall oversee that the actions carried out by such Government Authority or Government Agency or Local Authority are transparent and cause such Government Authority or Government Agency or Local Authority, report to the Authority in the manner as may be prescribed.

18. Appointment of Transaction Advisor.

(1)The concerned Government Authority or Government Agency or Local Authority may appoint a Transaction Advisor as per the requirements of the Project.(2)The functions and duties of the Transaction Advisor shall be such as may be prescribed.

Chapter IV Miscellaneous

19. Single Window Clearance.

(1)The Authority shall provide Single Window Clearance for administering the proposals in relation to the Infrastructure Project under the Act.(2)The procedural details of the Single Window Clearance shall be such as may be prescribed.(3)The Authority shall from time to time, accept all documents, proposals and applications under the Act through online mode designated by the Authority or designated by the State Government for this purpose and any such document, proposal or application so uploaded shall constitute a valid submission for the purposes of the Act.(4)The Government and the Authority shall promote digital system and e-governance in respect of all matters of the Act.

20. Applicability of Information Technology Act, 2000 (21 of 2000).

- The provisions of the Information Technology Act, 2000 (21 of 2000) shall apply to the information submitted by any Person or exchanged with any Person in respect of any matters relating to the Act.

21. Transparency.

(1)The Authority or Government Authority or Government Agency or Local Authority shall ensure transparency in their functioning under the Act.(2)Any Person while submitting the proposal to the Authority under sub-section (1) of section 6 of the Act shall enter into integrity pact with the Authority.(3)The details of the integrity pact shall be such as may be prescribed.

22. Delegation of powers.

- The State Government may, by notification in the Official Gazette, direct that any power exercisable by the State Government under this Act (except the power to make rules under section 24) shall be exercisable by an officer of the State Government, subject to such terms as may be specified in such notification.

23. Act to have overriding effect.

- The provisions of this Act or the rules made thereunder shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

24. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of the Act.(2)Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall, from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be ; so however that, any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

25. Power of Authority to make regulations.

(1)The Authority may, with previous sanction of the Government, by notification in the Official Gazette, make regulations consistent with the Act, generally to carry out the purposes of the Act.(2)The Authority shall make the regulations for the following purposes,-(a)the procedure to be followed by the Authority;(b)provide the standard forms of agreements and documents;(c)direction to be issued to the concerned Government Authority or Government Agency or Local Authority;(d)any other matters as may be prescribed.

26. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall lie against the Government, Government Authority or Government Agency or Local Authority or, any officer or employee of the Government, Government Authority, Government Agency or Local Authority, for anything done or purported to have been done in good faith, in pursuance of the provisions of this Act or rules or regulations made thereunder.

27. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purposes of removing the difficulty :Provided that, no such order shall be made after expiry of a period of two years from the date of commencement of this Act.(2)Every order made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

28. Repeal of Maharashtra Ordinance VII of 2018 and saving.

(1)The Maharashtra Infrastructure Development Enabling Authority Ordinance, 2018 (Maharashtra Ordinance VII of 2018), is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of this Act.