

# Swiss Challenge Method – Conundrum An Innovative Public Private Partnership Model in India

Rahul Reddy Talakola, Consultant - Infrastructure

Andhra Pradesh, India

## Abstract

Infrastructural and social development projects were identified as critical inputs for continuing growth of the Indian economy. These projects are highly capital intensive. India is facing a very high deficit in implementing these projects. Public Private Partnership is being seen as an alternative to meet this deficit in India. Governments in India had implemented various projects under different Public Private Partnership (PPP) models. However, the projects under PPP models are conceived by the Governments. Governments may not conceive many innovative projects because of different reasons. For such innovative projects, the governments intend to provide an opportunity to the private sector to conceive an innovative project and submit the project report for consideration. These innovative projects could be done under Swiss Challenge Method (SCM). In this paper, the main idea and detail process of SCM Method are explained. An attempt was also made to identify aims, strengths and weaknesses of SCM including the contradictory approaches of Central and State Governments in India.

**Keywords:** Public Private Partnership, innovative Projects, Swiss Challenge, original project proponent, Private Player.

## Introduction

Infrastructural development and social development projects were identified as critical inputs for continuing growth of the Indian economy. These projects are highly capital intensive and require huge investments. India is facing a very high deficit in implementing these projects. Public Private Partnership is being seen as an alternative to meet this deficit in India. Over the years, union and state Governments in India had introduced and implemented various projects under different Public Private Partnership (PPP) models including Service Contract and Management Contract, Turnkey contracts, Lease contract, Concession, Private Finance Initiative and Private ownership, Joint venture, Build Operate Transfer (BOT), Build Own Operate Transfer (BOOT), Build Operate Lease Transfer (BOLT), Operate Maintain Transfer (OMT), Viability Gap Funding (VGF), Design Build Operate (DBO), Built Own Operate (BOO) etc. However, the projects under these PPP models are planned and conceived by the

Governments and executed by the private partners. Governments both at the center and at the states may not conceive many innovative projects and proposals in various sectors because of different reasons. For such innovative projects, the governments intend to provide an opportunity to the private sector participants to conceive an innovative project and submit the project report for consideration. These innovative projects could be done under Swiss Challenge Method (SCM).

## **Review of Literature**

Walker and Smith (1995) explained three main reasons for using Public Private Partnership approach. They are (i) the private sector possesses better mobility than the public sector. (ii) The private sector saves the costs of the project, avoids the bureaucracy and relieves the administrative burden. (iii) The government lacks the ability of raising massive funds for the large-scale infrastructure projects. Tiong (1996) had found six critical success factors in winning BOT contracts namely entrepreneurship and leadership, right project identification, strength of the consortium, technical solution advantage, financial package differentiation and differentiation in guarantees. Qiao, Wang, Tiong, and Chan (2001) explained eight critical success factors in BOT projects in China. Zhang and Kumaraswamy (2001) had discussed issues that governments need to deal with, for the smooth working of BOT mechanism. The issues are illustrated by relevant examples from Hong Kong experience. Hardcastle, Edwards, Akintoye and Li (2005) had identified critical success factors in Public Private Partnerships in United Kingdom by using factor analysis. Zhang (2005) had made a study on critical success factors for public-private partnerships in infrastructure development. Satyanarayana and Singh (2009) studied various approaches used for financing PPP road projects in India. Anant and Ram Singh (2009) studied the factors determining the performance of the Public Private Partnerships (PPPs) for development of highways and expressways in India. J. Yuan et al (2010) examined the driving factors of public-private partnership projects in metropolitan transportation systems in China. After review of existing literature it is concluded that there was no study which dealt with exclusively on Swiss Challenge Method. Hence this study was made.

## **Objectives**

The general objective of the paper is to understand the Swiss Challenge Method which is an innovative Public Private Partnership Model in India. The specific objectives are the following

1. To understand the main idea and detailed process of Swiss challenge Method.

2. To review the aims and analyze the challenges in existing scenario of Swiss Challenge Method.
3. To examine the strengths and weaknesses of the Swiss Challenge Method.

### **Methodology**

The present study is a descriptive study. An attempt is made to review the existing literature on Public Private Partnership models in India and abroad. After extensive survey of the literature it was found that there was no specific study which dealt with Swiss Challenge Method. Hence, this study is made. In this study, the main idea and detail process of Swiss Challenge Method are explained. An attempt was also made to identify the aims and analyse the challenges in existing scenario, strengths and weaknesses of Swiss challenge Method.

### **Main Idea**

Swiss Challenge method is one of the ways of awarding government contracts to private players. Without an invitation from government, a private player can submit a proposal to government for development of an infrastructure project with exclusive intellectual property rights. Then government has two options with the proposal. One, Government can buy the intellectual property rights from the original proponent and call for a competitive bidding to award the project. Two, Government allows other players with similar capabilities to submit their proposals. If any proposal is better than the proposal of the original proponent, the original proponent is asked to match with the other proposal. If he fails, then it would be awarded to the best bidder.

### **Detailed Process**

Under Swiss Challenge Method Project proponent submits an innovative proposal with project report which may not be necessarily initiated by the government. Private Sector Participant in this method is generally called as 'Original Project Proponent'. And the proposal is a suo-motu proposal. The Original Project Proponent submits the proposal document to the Government Agency or local authority depending upon the jurisdiction of the proposal. The proposal document should consist of the (i) details of proponent's technical, commercial, managerial and financial capability, (ii) technical, financial and commercial details of the proposal, and (iii) principles of the Concession Agreement. The Government Agency or the Local Authority first evaluates the Original Project Proponent's technical, commercial, managerial and financial capability as may be Prescribed and determine whether the Original Project Proponent's capabilities are adequate for undertaking the project.

The Government Agency or the Local Authority forwards such suo-motu proposal to the Infrastructure Authority along with its evaluation within prescribed time for the approval. The Infrastructure Authority then weighs the technical, commercial and financial aspects of the Original Project Proponent's proposal and the Concession Agreement, along with evaluation of the Project by the Government Agency or the Local Authority and ascertain if the scale and scope of the project is in line with the requirements of the State and whether the sharing of risks as proposed in the Concession Agreement is in conformity with the risk-sharing frame-work as adopted or proposed by the Government for similar projects if any and if the project is in conformity with long term objective of the Government.

If the Infrastructure Authority recommends any modification in the technical, scale, scope and risk sharing aspects of the proposal or the concession agreement, the Original Project Proponent will consider and incorporate the same and re-submit its proposal within prescribed time to the Government Agency or the Local Authority. If the Infrastructure Authority finds merit in such suo- motu proposal the Infrastructure Authority will then require the Government Agency or the Local Authority to invite competing counter proposals using the Swiss Challenge Approach giving adequate notice as may be prescribed. The Original Project Proponent will be given an opportunity to match any competing counter proposals that may be superior to the proposal of the Original Project Proponent. In case the Original Project Proponent matches or improves on the competing counter proposal, the Project shall be awarded to the Original Project Proponent. Otherwise, bidder making the competing counter proposal will be selected to execute the project.

In the event of the Project not being awarded to the Original Project Proponent and being awarded to any other Bidder, the Government Agency or the Local Authority will reimburse to the Original Project Proponent reasonable costs incurred for preparation of the suo-motu proposal and the Concession Agreement. The suo-motu proposal and the Concession Agreement prepared by the Original Project Proponent shall be the property of the Government Agency or the Local Authority as the case may be. The reasonable costs of preparation of the suo-motu proposal and the Concession Agreement shall be determined as per the norms Prescribed by the Government, and shall be binding upon the Original Project Proponent. There may be some modifications in the procedures from the state to state.

### **Aims of Swiss Challenge Method**

The main aims of Swiss Challenge Method include (i) Initiation in spotting an unidentified need and provide solution for the same, (ii) To bring in technology, finance and expertise in execution among others, (iii) To encourage induction of new technology and promotion of unique solutions which could result in value addition for the project, (iv) To provide financially sustainable solutions, and (v) To augment public private partnerships in sectors or projects which are not covered under the current PPP framework.

## **Strengths of Swiss Challenge Method**

The following are the advantages of Swiss Challenge Method

1. This method is very useful for the governments that have limited technical and financial capacity to develop projects.
2. This method promotes innovation and incentivizes to propose new ideas
3. It also reduces transaction cost
4. If the project is awarded to project proponent it can be implemented faster.
5. This method incentivizes private sector participation.
6. This method is Potential route for furthering local projects that are not national priorities.
7. Under this methodology, certainty of success is ensured as at least one willing private partner is available right from the beginning.
8. This method results in better project structuring as the project proponent does a detailed feasibility and financial analysis of a project. The initial structuring by the project proponent brings in efficiency and better understanding of financial implication resulting in development of economically sustainable model.
9. The identification of timelines, identification of risks and their allocation along with transparent bidding criteria becomes easier for the authority because the project preparation is done in more professional manner.
10. Time and cost saving in respect of pre project activities and feasibility studies as these studies have to be conducted in advance by the authority in case of other Public, Private partnership Models.
11. Benchmarking of project costs, revenues and returns can be done through undertaking necessary technical and financial studies before the bidding stage.
12. Transparency can be ensured in bidding process.

## **Weaknesses of Swiss Challenge Method**

1. There are risks of insufficient transparency and inadequate competition in the Swiss Challenge Method.
2. There is no legal validity of using this method when a counter proposal contains

different specifications than the original proposal.

3. There is no symmetry in bidding time given to bidders to prepare counter proposals in relation to time taken by originator for preparation
4. It is very difficult to measure monetary value of unsolicited proposal when contract or project is not given to original proponent.
5. There is no guarantee that that unsolicited bidder won't withdraw its offer.

### **Swiss Challenge Method – A unique procurement process from rest of PPP models**

Instead of waiting for the government to identify projects, the Swiss Challenge method allows firms to propose projects, and yes, this leads for the upcoming of innovative and comprehensive project proposals without any limitation.

A typical infrastructure project, coming out under the above circumstances always have an edge and better results over those which are conceptualized in any closed room or under a bunch of individuals with limited resources and results. The Swiss challenge method under PPP actually opens up the gates for more rigorous competition and able private companies to come up voluntarily with many such proposals and ideas as partners for nation development which benefits the People in turn.

This unique modus-operandi of PPP allows any private players to come up with their unique proposals to the Government / ULB or authority to develop the said proposal (project) where many of such projects are even untouched and not thought to be implemented in real due to lack of expertise, orientation and capacity building. Then after consultations and approval of the Government / ULB or authority, such proposal is kept for open bidding in the market giving a chance to other players in the similar field and expertise if they can propose a better proposal, which even helps and assures the Government / ULB or authority of not being exploited in any unknown conditions.

Traditionally, the bidding process for a project involves the government identifying the project and seeking bids from companies/consortiums in the private sector who will ultimately undertake the project. The government also lays down certain parameters that bidders must meet in order to qualify for the bidding process. This process relies primarily on the government for identifying new projects. For India, the Swiss Challenge method is a new step in the field of public private partnerships. It entails a private sector enterprise (the original proponent) suo - motu identifying a project and then going to the government with the proposal. The government subsequently starts a competitive bidding process for the project in accordance with its standard rules. Generally, the key proprietary information contained in the proposal made by the original proponent is kept confidential. In order to incentivize the private sector to make such proposals, the government may offer certain privileges to the original proponent. For instance, the government may provide the original proponent an opportunity to match or better the winning bid on the completion of the competitive bidding process in other words, a right of first refusal. This process may have a One or Two stage bidding depending on the complexities of the project. Though it has many positives, this process is always in news and

fighting its legal battles in many courts claiming it as a mode which lacks transparency and the same was critically acclaimed by the Kelkar committee in its report. And in order to attend this issue and to ensure trust for the private partners and FDIs there is a need of Law or a set of guidelines from NITI Ayog or Mof - GoI. Till date India doesn't have any guidelines or rules relating to Swiss challenge as other modes of PPP has and different states have their own set of rules and regulations, there are certain judgements of many Hon'ble state High Courts and Hon'ble Supreme Court of India in terms of process to be followed and to incorporate more transparency so as for its more efficient use.

**Some of the rulings of Hon'ble Supreme Court and State High Courts on Swiss Challenge are:**

- The nature of the Swiss Challenge method and its particulars should be published in advance by the relevant authority. (During the release of RFP or RFQ)
- The nature of projects that can be bid for under the Swiss Challenge method should also be clearly enumerated by the relevant authority. (Before setting a benchmark to other players during RFQ/P stage)
- There must be a clear mention or notification of the authority which is to be approached with project plans in the event that a private person wishes to make a Swiss Challenge project proposal.
- Alongside the nature of the projects, the fields in which such projects are categorised must also be notified. This would assist a potential bidder in determining the appropriate authority to approach. (Decentralised mechanism - appropriate authority)
- The relevant authority must set clear rules regarding timelines for the approval of a project and the relevant bidding process.
- The rules decided upon must be followed once the project received/identified via the Swiss Challenge method has been approved by the relevant authorities and a decision has been taken to use the Swiss Challenge method to take the bidding process forward.
- Ample opportunity must be provided for a participatory and adequately competitive bidding process. (The time and transparency - fair chance)
- The Commercial Bid would not come under the intellectual or proprietary information. And the Commercial bids shall be opened and disclosed upfront which would also help the authority to decide on whether the proposal is really beneficial for the state. Suppression of Commercial Bid information would restrict applicants from coming forward with meaningful counter proposals/challenge.



- The proposals should always come from bottom where the “Government Agencies”/ local authority should do the scrutiny and then move it finally to the State / central Government. (Bottom to Top Approach) and, thereby giving them of an opportunity of making an independent assessment of the technical, commercial and financial bids of the OPP.

Understanding the importance of Private sector participation in Infrastructure sector in India and a need for profitable innovation and development at the same time, the key concerns of Swiss Challenge method needs to be addressed by the Government.

A major issue is that many proposals under this mode are associated with a lack of competition and transparency. Much of the controversy stems from governments granting exclusive development rights to private proponents without a transparent Bidding process. Private proponents or the Original Project Proponents commonly argue they have intellectual property rights to project concepts, are the only developer interested in the project, or can save the government time and money by sole-source negotiating project details. Unfortunately, governments are often too easily convinced by these arguments and, as a result of being sole-sourced, the unsolicited proposals lend themselves more easily to corruption.

Another major issue is the increasing numbers of Swiss Challenge proposals presented to governments both at the Centre and States and the number is certainly high in the states of Gujarat, Andhra Pradesh and Karnataka; Where in many cases the origin of a project is not clear. Such proposals are beginning to represent a significant share of overall projects in such states and these proposals can create negative public perceptions if there is such lack in clarity and transparency. Many policy makers (Kelkar Committee) have realized the need to directly address them in PPP legislation.

Always giving a chance for increase of burden on governments and corresponding perceptions of corruption, which leads to arguments to prohibit them altogether.

Some states like Gujarat, Karnataka, Andhra Pradesh, Punjab, Haryana and Maharashtra have formulated and adopted their own guidelines and most of them failed to clear the following concerns of the Bidders.

**Some of the key concerns are:**



### Establishing Time Constraints

Under current practice in many states, the government specifies the time allotted to complete certain stages of the approval and bidding phases. The state acts usually specify a time limit for preliminary approval for the project, Original Proponent's proposal submission, reaching a finalized project, putting the project out to public bid, and a closing date for challengers to submit counter-proposals.

S.No	State	Timeline for OPP Proposal Submission (days)	Timeline for competing Bidder's proposal submission (days)
1	Haryana	30+30	75
2	Karnataka	100+20	Not Mentioned
3	Madhya Pradesh	90	30
4	Gujarat	30	Not Mentioned
5	Andhra Pradesh	Not Mentioned	Not Mentioned

The original project proponent has an obvious competitive advantage with time constraints for counter-proposals. The proponent has spent considerable time and effort preparing the project and subsequently is much more familiar with the project characteristics. An opponent, however, is usually given only a short time to challenge the project (as seen in the above table), as little as 30 days and open ended in case of many. Many potential challengers may not be willing to compete without sufficient time to prepare.

### Coordinating among Agencies or ULBs by the state

In most states, the planning and coordination of major infrastructure projects fall within the competence and ambit of different Government Agencies and ULBs. But the States / Ministries select such a proposal directly and Local governments are not involved in such cases. This can lead to lack of transparent proposal evaluation and be a heavy burden for ULBs and Agencies if such proposals are imposed on them ultimately rising to financial constraints leading them nowhere and loss to proponents of Swiss challenge proposals if exercise is not performed in bottom – top approach and lacking communication between the relevant government's entities.

### **Determining the Intellectual Property**

The Government should determine what part of project proponent comes under Intellectual property and what needs to be disclosed so as to give the competing edge to the Bidders / Counter proposals. It's not appropriate to ask the third party to match or better the existing proposals without disclosing the required information like Original Proponent's Commercial Bid, Time frame / schedule for completion of the Project, Details of the projects and verticals and the proposed outcome for the project. Where the technological where and how can be the Intellectual property for the same.

### **Effective Sector Planning**

Allowing the private sector to present proposals in sectors that are part of network infrastructure could be cause for concern. In theory, the private sector's only concern is making a return on its investment without consideration for the general welfare or overall economic benefit of the country / State (Like in APIDEA and Guidelines for Swiss Challenge – Haryana). For example, a private developer would have little concern if by proposing a new tourist recreational area it is diminishing the country/state's port expansion capacity in the medium or long term. In order to address such concerns, countries such as Andhra Pradesh, Haryana, and Madhya Pradesh (broadly) only allow unsolicited proposals for projects that are part of its strategic infrastructure investment plan. In these cases, the government periodically defines the priorities in the different sectors in broad terms, leaving project details to be developed by interested parties.

### **Call for Transparency**

The country's uniformity seems to be diverse not only under civil laws but also various policies.

All of the policies are supposed to be followed uniformly across the Republic of India.

The Government of India, where it had got the centralized regulation for different sectors like Highway, Telecom, Real Estate, Ports etc., and their governing authorities why not a centralized policy for procurement rather than mere guidelines and model documents in place.

There are various guidelines from the era of Planning Commission to now NITI Ayog and model agreements to help the way of procurement so as to execute them in a transparent

manner, nevertheless these only guidelines and are not mandatorily followed, as there is no law / policy in place for the same.

The procurement policies from PPP to EPC vary from one state to another and from one department to another of a same state.

And one of such is the Swiss Challenge route, with many controversies to its credit.

Some of the controversies and petitions filed in various courts across India are -

- 1) Aditya Housing and Infrastructure Development Corporation Pvt. Ltd & Ors Vs State of Andhra Pradesh (High Court of Judicature at Hyderabad) in 2016
- 2) Ravi Development Vs Shree Krishna Prathisthan & Ors (Supreme Court of India) in 2009
- 3) Dr. Raju Mathew Vs State of Kerala (High Court of Kerala) in 2015
- 4) Shree Ostwal Builders Ltd Vs State of Maharastra & Ors (Bombay High Court) in 2008
- 5) PIL filed by Ex-Chief Secretary (Mr. IYR Krishna Rao) of Andhra Pradesh on Swiss Challenge Process adapted by GoAP for Amaravathi development (High Court of Judicature at Hyderabad) in 2018. **And many others.**

Reason for all the above is being lack of fairness & transparency.

The Government of India, MoF in a reply to the recent RTI filed by me on its stand on procurement through Swiss Challenge route for execution of projects has clearly stating that the Central Government discourages the practice of accepting unsolicited proposals as it compromises the general principles of transparency, economy and fairness in the award of contracts for infrastructure projects by public authorities (The same is attached below). This means that the Government of India in principle is against the same and shall not extend its support to any of such projects executed by way of Swiss Challenge / Unsolicited proposal route. This shall be deemed further that it shall not extend its support in the way of convergence or VGF to the states for awarding of works enrooting Swiss challenge. If that is the case the states are wholly responsible for their projects and procurement policies.

## Online RTI Status Form

Note: Fields marked with \* are Mandatory.

Enter Registration Number	DOEAF/R/2018/50154
Name	Rahul Reddy Talakola
Date of filing	05/04/2018
Public Authority	Department of Economic Affairs
Status	REQUEST DISPOSED OF
Date of action	23/04/2018
<p>Reply :- The Committee established under the chairmanship of Dr. Vijay Kelkar in its Report on Revisiting and Revitalizing Public Private Partnership Model of Infrastructure (2015) has recommended to actively discourage unsolicited proposals (Swiss Challenge) as they bring information asymmetries in the procurement process and result in lack of transparency and in the fair and equal treatment of potential bidders in the procurement process. The Central Government discourages the practice of accepting unsolicited proposals as it compromises the general principles of transparency, economy and fairness in the award of contracts for infrastructure projects by public authorities.</p>	
CPIO Details :-	Seema Jain Phone: 23093404 seema.jain74@nic.in
Nodal Officer Details :-	
Telephone Number	23095067
Email Id	ganga.sinha@nic.in

The same has been confirmed in another query seeking for the clarification on Central Government assistance for projects taken under Swiss Challenge by the Department of Economic Affairs, Government of India.

This is with reference to my previous RTI application (Ref: DOEAF/R/2018/50154 ) requesting for the Government of India stand on Un-Solicited / Swiss Challenge proposals.

And Your kind offices have replied me vide your reply dated: 23/04/2018 that the Central Government discourages the practice of accepting unsolicited proposals as it compromises the general principles of transparency, economy and fairness in the award of contracts for infrastructure projects by public authorities.

In line with above reply as stated by you, I further request your kind offices to enlighten me that in cases where states adopt procurement (Developer etc) under Swiss Challenge model in any of the projects under their independent policies, would they be eligible for any Central assistance (Either through convergence or VGF etc.) and in such a case if any state requests the same, would the Central government provide its assistance (in terms of financial assistance) for such In-Solicited / Swiss Challenge projects.

## Online RTI Status Form

Note: Fields marked with \* are Mandatory.

Enter Registration Number	DOEAF/R/2018/50195
Name	Rahul Reddy Talakola
Date of filing	03/05/2018
Public Authority	Department of Economic Affairs
Status	REQUEST DISPOSED OF
Date of action	17/05/2018
<p>Reply :- No, As per the scheme and Guidelines for Financial (VGF) support to PPPs in Infrastructure, the Private sector company shall be selected through a transparent and open competitive bidding process and the criteria for bidding shall be the amount of Viability Gap Funding required by a private sector company for implementing the project where all other parameters are comparable. Therefore in clear, that to be eligible for Viability Gap Funding (VGF), under the aforesaid scheme, Private Sector company should be selected through a transparent and open competitive bidding process only.</p>	
CPIO Details :-	Seema Jain Phone: 23093404 seema.jain74@nic.in
Nodal Officer Details :-	
Telephone Number	23095067
Email Id	ganga.sinha@nic.in

If this is the case and government believes that the process of procurement lacks transparency, the same shall be notified to all the states in the Republic and form a centralized policy for the same, where the Union and State governments work at par.

But surprisingly, that's not happening. Many of the states like Andhra Pradesh, Maharashtra, Karnataka, Haryana, Madhya Pradesh etc., have come up with the set of new policies independently for the execution of Infrastructure projects under Swiss Challenge route and the states like Gujarat and Andhra Pradesh amending their existing policies to promote the process in the last two - three years.

## Conclusion

The Swiss challenge method if followed to provide transparency for induction of capital for infrastructure and social sectors where innovative proposals are received, this methodology may also lead to innovation in project ideas and designs. The Swiss challenge system is being widely applied across various Indian states including Andhra Pradesh, Kerala, Karnataka, Rajasthan, Gujarat and Punjab in different sectors such as Roads, Bridges and Bypasses, Health, Land reclamation, Canals, Dams, Water supply, Water treatment and Water distribution, Waste management, Sewerage, drainage, Public Markets, Trade Fair, Convention, Exhibition and Cultural Centers, Public buildings, Inland water transport, Gas and Gas Works, Sports and recreation infrastructure, public gardens and parks, Real Estate, Agriculture, Horticulture, allied sector and post-harvest management, Education including Technical Education, Housing and Environment, Information Technology, Industrial infrastructure, Irrigation, Logistics, New and Renewable Energy, Power sector, Public Transport, Public Buildings, Tourism, Urban Development etc., however, allegations for lack of transparency and charges for corruption are constant everywhere through this method of award. The model has been successfully tried in countries such as Virginia, Costa Rica, Chile, South Africa, Sri Lanka, China, Indonesia, Philippines, Taiwan, South Korea, Argentina, Malaysia and many South-Asian countries mainly in the transportation and industrial sectors. In fact Philippines has banned all other procurement processes and only depend on this method for its project development.

The division in opinions of Centre and States further may create more complexities to the existing and may create problems in the execution of the projects, as against having a smooth, friendly and transparent process & policies for the Infrastructure projects involving in huge investments and high gestation periods so as to promote and implement the PPP model effectively.

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