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**SWISS CHALLENGE METHOD-
UNSOLICITED PROPOSALS FOR
DEVELOPMENT**

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Introduction

Infrastructure development and its advancement is the first indicator of the level of growth of a nation. While the Government of India has explored various options for a speedy and efficient development of the country's infrastructure, there are still many a gaps in the Indian infrastructure growth story.

Traditionally, the conceptualization, designing and planning of an infrastructure project is undertaken by the government followed by tenders and awards for such projects to the selected bidders. The government usually uses the least cost method or the quality and cost based selection method for granting these tenders and encourages the public private partnership for effecting the projects. However, a private sector entity may also take the initiative and pursue the government *suo moto* for development of social infrastructure projects. To avoid allegations of arbitrariness, unfairness and biasness, the most common method adopted by the government in granting approval to such unsolicited proposals is the Swiss Challenge Method ("**the Method**").

Process Involved in the Method

The Method is an innovative way of awarding infrastructure development contracts by the government and involves the following process:

- a) A private sector entity ("**Originator of Proposal**") approaches the government for development of a new infrastructure project or improvement of an existing infrastructure project ("**Unsolicited Proposal**"). It is not

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necessary that such Unsolicited Proposal should be a project initiated by the government or is an ongoing development project.

- b) The Originator of Proposal provides the government with project specifications (technical, commercial and financial viability of the project), plan of action, basic contractual terms and a time frame for completion and implementation of the project.
- c) If the government finds the Unsolicited Proposal suitable and beneficial, it may negotiate directly with the Originator of Proposal to bring modifications in the project, as may be needed and approve the Unsolicited Proposal.
- d) Once the modifications are made, the government follows the procedure of competitive public bidding, thereby inviting third parties to give suggestions and improve the original Unsolicited Proposal.
- e) The proposal of the selected bidder ("**Selected Bidder**") is then compared with the original Unsolicited Proposal and if the original Unsolicited Proposal is not preferable then the Originator of Proposal is given an opportunity to make his proposal competitive with the proposal of the selected bidder.
- f) If the Originator of Proposal fails to make his proposal competitive with the proposal of the Selected Bidder, then the Selected Bidder shall be awarded the project.
- g) The Originator of Proposal is however reimbursed for the cost incurred by him in preparing the Unsolicited Proposal.

Acceptability of the Method in India

The Method is not new to India and has been accepted by many states as a process of allotting projects. The state of Gujarat included this Method in the Gujarat Infrastructure Development Act, 1999 and in the year 2006, the government further amended the Act to provide the power of direct negotiation between the private entity and the government. Subsequently, the states of Andhra Pradesh, Rajasthan, Madhya Pradesh and Punjab had also included the Method in their respective infrastructure development statutes. In 2015, this Method was in much discussion as the Union Cabinet gave approval to use this Method for redevelopment of a few Indian railway stations. Even the Ministry of Road, Transport & Highways was in favour of using the Method for the development of roads and highways.

The Supreme Court of India gave its stamp of approval to the Method in the matter of *Ravi Development Vs. Shree Krishna Prathisthan and Ors* ^[1], and held that, “the said method is beneficial to the government inasmuch as the government does not loose any revenue as it is still getting the highest possible value.”

However, the courts are cautious and have emphasised that while awarding contracts for development of infrastructure, public interest should be paramount and there should be no arbitrariness in awarding the contracts ^[2].

Suitability of the Method to India

The Method promotes public private partnership and provides an incentive to the private entity to bring innovation and contribute to the development of the vast country as India. Considering the scale of infrastructure development required in India with its geographical dynamics and the financial constrain of the government, the Method is a creative and cost effective way for augmenting infrastructure development in the country.

While the Method appears to be a pragmatic win-win alternative for all parties, it is argued that the process of awarding contracts under the Method may expose the Originator of Proposal to unnecessary competition, delays and loss of innovative business ideas. On the other hand, to minimise allegations of favouritism, unfairness and corruption by large corporate to bag projects, it is advisable that a well thought out, transparent and effective implementation mechanism is put in place to effectively use the Method for awarding projects for infrastructural growth of the country.

^[1] AIR 2009 SC 2519

^[2] Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation, AIR 2000 SC 2272

Feedback

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