

BOOT POLICY



GUJARAT MARITIME BOARD

**BUILD-OWN-OPERATE-TRANSFER (BOOT)
PRINCIPLES UNDER PORT POLICY-1995**

GOVERNMENT OF GUJARAT

Ports & Fisheries Department
Resolution No. WKS-1097-G-213-GH
Sachivalaya, Gandhinagar.

Dated 29th July, 1997

RESOLUTION

The Government of Gujarat has in December, 1995 announced the port Policy, which integrates the development of ports with industrial development, power generation and infrastructure development. The policy envisages development of ten green-field ports, six of them as fully private and four as joint sector ports. The Gujarat Maritime Board will act as Co-ordinating Agency in the implementation of this policy. The Government has already initiated Detailed Project Report / Pre-Feasibility Studies for these sites. The Government is hereby pleased to announce package of BOOT principles as a next action of the Government. The BOOT principles will serve as a framework for involvement of private sector in the construction and operation of these new ports. The BOOT principles have been formulated for the operation of new private and joint sector ports in Gujarat as announced in the Port Policy, 1995.

The Guiding Principles for BOOT package and BOOT principles are annexed herewith as Annexure-A and B respectively.

This issues with concurrence of Finance Department on this Department's File of even number.

By order and in the name of Governor of Gujarat,

Vagmin Buch

Joint Secretary Ports & Fisheries Department
Government of Gujarat To,

The Secretary to the Hon'ble Governor of Guj. Raj Bhavan, Gandhinagar (By Letter)
The Principal Secretary to the Hon'ble Chief Minister, Sachivalaya, Gandhinagar All P.S.s to
Ministers/Ministers of State / Dy. Ministers, Sachivalaya, Gandhinagar The PS to Chief Secretary,
Sachivalaya, Gandhinagar The Chairman, Gujarat Maritime Board, Ahmedabad. The Vice Chairman
& Chief Executive Officer, GMB Ahmedabad The Accountant General, Ahmedabad / Rajkot All
Departments of the Secretariat The Select file.

ANNEXURE - A

Annexure to P & FD GR No. WKS-1097-G-213-GH Dated 29th July 1997.

GUIDING PRINCIPLES FOR BOOT PACKAGE

The following guiding principles have been the basis for framing the Build, Own, Operate & Transfer (BOOT) Package.

(1) TIMELINESS OF INFRASTRUCTURE CREATION

It is necessary that the package creates an environment which facilitates the timely creation of envisaged port facilities.

(2) EFFICIENCY OF OPERATIONS AND OPERATIONAL AUTONOMY TO PRIVATE SECTOR

The Government desires that the new ports be operated at International standards of performance and efficiency and the waterfront is optimally utilized. To facilitate this, the developer would be provided with a high degree of operational freedom. At the same time, the new ports would be required to operate in a commercial and market driven environments, so that competition and efficiency is encouraged.

(3) SYNCHRONISATION WITH HINTERLAND DEVELOPMENT

The new port facilities would reflect the changing requirement of hinterland, i.e. facilities and capacity for the right type of cargo and right quantum should be created. It is intended that the new ports become hubs of industrial activity and serve as catalysts for economic growth in the region. The development of new port will be phased in synchronisation with current and future investments in the area.

(4) MAINTAIN GOVERNMENT ROLE ONLY IN APPROPRIATE AREAS

Since the ports are of strategic importance to the State, the Government has to ensure that the key interests in security, defence, environment and economic development are safeguarded. However, as a principle, the role of Government will be limited to areas where it is necessary and appropriate. Government and user interest would be protected by establishing a suitable regulatory framework.

(5) ENSURING THAT GOVERNMENT'S FINANCIAL LIABILITIES ARE KEPT AT A MINIMUM

The Ports are to be developed as commercially viable entities capable of operating without Government support. Given the commercial nature of port operations, their recourse to the Government would be kept to minimum and responsibility of financing the port will rest with the developer.

Government will grant licence/concession to private developer to build, own, operate and manage port facilities for a specific period. The Government will permit the developer to create a mortgage/hypothecation of real estate as a security for lenders to the project. This permission will be limited to BOOT period, after which the assets will be transferred back to the Government. The ownership of the land and waterfront will always vest with the Government.

ANNEXURE - B

Annexure to P & FD QR No. WKS - 1097 - G - 213-QH Dated 29th July, 1997.

BOOT PRINCIPLES

The BOOT Principles, evolved on the basis of guiding principles referred to in ANNEXURE - A, are as under.

(I) DEFINITIONS

"Developer"- The word "Developer" has been used in this documents to convey the various roles played by private parties at different stages of the development of the port.

Prior to the selection of a private party for the development of the port, "Developer" indicates a company or a consortium of companies that are interested in or have bid for developing the port, After the government has selected the private party responsible for the development of the port. "Developer" indicates the party selected by the Government for developing the proposed site. During construction, operation and transfer of the port, "Developer" implies the project company that has been constituted by various private interests for implementing the port project, with whom the Government will sign a Concession Agreement.

(II) THE BCILD STAGE OF THE BOOT PACKAGE

1. Land Location The GMB will identify the port location and delineate the area of waterfront and back-up land. In the event that the Developer Proposes and alternative site in the vicinity of the specified area, the Government may consider the same.

- | | |
|-------------------------------------|--|
| 2. Land Acquisition responsibility | Acquisition of land for the project will be the responsibility of the Government/GMB |
| 3. Terms of lease for land | <p>Land will be allotted on lease to the Developer for a term concurrent with the term of the concession agreement.</p> <p>The Lease rental will be charged for the land by way of a structured lease rental payment mechanism. The determination of lease rentals would be based on the cost of acquisition of land incurred by the Government.</p> |
| 4. Land for expansion | <p>The Government will facilitate future expansion of port related activity, and the setting of industrial parks, commercial ventures, roads and railways etc. in the vicinity of the port.</p> <p>To accomplish this, the Government will adopt one of the following options:</p> <p>Options 1 :</p> <p>The Government will acquire, and keep in reserve for later use, land in the vicinity of the land earmarked for development of the port.</p> <p>Options 2 :</p> <p>The Government will not allow any development on the land in the vicinity of the land earmarked for development of the port (Say, within 500m distance of the port limit)</p> |
| 5. State Government Tax Concessions | The Government may extend tax concessions to the projects by way of lowered Stamp Duty and Registration Fee. |
| 6. Demarcation of Notified Area | As an incentive to the project, the Government intends to demarcate the port area and award it the status of a "Notified Area" |

7. Site Studies

GMB will make available with the notice inviting tender for the ports to be privatised, the latest available traffic study details, and the site-specific engineering pre-feasibility report.

Developer, however would be welcome to verify these studies and conduct additional studies at the proposed site.

The expenses incurred by the Government on site studies made available at the time of tendering would be recoverable from the selected developer.

The selected Developer would be required to undertake (among others) the preparation of the Detailed Project Report and the site-specific Environment Impact Assessment. GMB will assess the Detailed Project Report to ensure its conformance with the principles of the Concession Agreement.

8. Configuration

The Developer will have the flexibility to decide the Capacity/Configuration/ Cargo for a site, subject to conformance with parameters of environment safety and technical sufficiency.

In order to ensure that the solid cargo requirements of the hinterland are adequately catered to, the Government may stipulate, on a case-to case basis, the solid : liquid cargo

engage external agency for this purpose. GMB would be willing to provide technical staff on deputation during the construction stage of the port.

11. Financial Stake of Developer :

The Developer would be free to finalise the means of finance for the project and to structure the financing for the project.
12. Government Stipulation on Developer's Financial commitment

The relevant member(s) forming the bidding consortium of the project company must retain their financial commitment to the project for minimum period of five years of commercial operations. Government permission will not be required for reducing the financial commitment up to 51% of the equity in the port project within the first five years of operation, but further reduction in the stake during this period will require the concurrence of the Government.
13. Financial Stake of Government

The Government intends to participate in the development of Joint Sector ports as an investor and co-promoter. This will be effected by means of equity participation in the port company by various agencies of the Government.
14. Infrastructure Development

In order to facilitate port development, the Government intends to initiate concomitant development of road and rail corridors and industrial parks.

- 15 . Linkages to Transport corridors
- The road and rail linkages from the port to the nearest highway / rail head will be structured as separate BOT packages, subject to the relevant legislations. The port Developer will have the first preference of undertaking this development. In the event that the offer is declined, the same would then be offered to other private investors.

(III) OWNERSHIP RIGHTS OF DIFFERENT PARTIES

1. Ownership rights of the Government
- The Government is vested with sovereign rights as owner, overseer and conservator of the waterfront and licensor to the Contract.
2. Ownership Rights and responsibilities of the Developer
- The Ownership rights of the Developer would include * The right to mortgage, hypothecate or to execute such covenants as may be required for effectively vesting a charge on the port assets in favour of a lender to the project. * The right to sell, convey or transfer to another entity, the right title and interest and concession vested in the Developer, on the request of a lender to the project, subject to contractual documents. The new Developer will be selected by the lender in consultation with the GMB, and if necessary, the terms and conditions of the concession Agreement may be renegotiated.

(IV) OPERATION OF THE PORT

(A) Operational Issues

1. Conservancy The Developer will take on the responsibility for the conservancy function of the port on behalf of GMB.

2. Port Operator(s) and sub contracting of services The Developer may operate the port as a Full Service or as a Landlord port. The Government / GMB will Permit subleasing of facilities or subcontracting of services, provided that the Developer continues to remain responsible to the Government for due performance under the contracted terms and conditions.

3. Pilotage Provision Pilotage of vessels within the particular port limit would be the responsibility of the port operator. GMB will lay down qualification criteria for pilots and grant licenses permitting deployment of pilots and appointment of pilotage agencies, which would be subject to periodic review.

4. Obligatory Services In the larger interests of the port's safe and un-hindered operations, the Government would specify from time to time, a list of essential services (non-commercial) services, (typically in respect of safety, health, environment etc.) that the Developer would be obligated to render. The broad areas of service in this respect would be stipulated in the Concession Agreement.

5. Value Added Service
The Developer would have complete freedom to offer cargo related value-added services in the port premises.
6. Expansion of facilities and Competition between ports
- (a) Expansion of facilities
The developers would be encouraged to add capacity over and above the capacity contracted in the concession agreement. Such expansions will be eligible for incentives by the Government, such as land acquisition, extension of royalty holidays etc.
At the time of the signing of the Concession Agreement, the Developer will submit, and get approved by GMB, a broad perspective plan for the development of the port in the next fifteen to twenty years. The Government will not place restrictions on any expansion and further development of the port which is within the envisaged perspective plan, subject to statutory clearances. Expansions outside the scope of this plan would be subject to the approval of the GMB.
- (b) Competition between ports
The Government would encourage competition between ports. The following, however, would be ensured.
* The development of the ten ports would be appropriately phased over a period.
* Permission to set up captive jetties would not be granted, save in

exceptional circumstances.

7. Manpower
The Developer would have freedom in the recruitment of manpower for the port. GMB's resource pool of maritime experts could be considered for the same.

8. Operational Flexibility
The Developer would have complete operational autonomy (within the framework of relevant legislations) in respect of the operation of the port.

(B) COMMERCIAL ISSUES

1. Tarrif Flexibility
* The Developer will be given complete flexibility in setting and collecting all tariffs. This would entail, among others, the denomination of tariffs in foreign currency and collection of the same in Indian Rupees.
Role of Regulatory Authority :
The port regulatory authority will act as a forum where representations with regard to unfair/monopolistic behaviour relating to tariffs can be made by various parties. The regulatory authority will act as an independent body in this regard, without interference from the Government.

2. Royalty Payments to the Government
A "Waterfront Royalty" will be set by and payable to the Government by the port. This will be charged on a per-ton-per-type-of-cargo basis.

- This royalty will be payable by all new ports, irrespective of the ownership structure. GMB will publish a schedule of charges for this purpose and these would be subject to revision at specified intervals. The revision will be done through a pre-specified formula or a transparent mechanism. The Government will not partake a share in revenues from any other core/value added port service undertaken by the Developer.

3. Royalty
Concessions

The Developer will be granted a concession on the Royalty payable to the Government for a specific period of time. During this period (referred to as 'Royalty Holiday Period'), the Developer is liable to pay only Rs. 10 per tonne of liquid cargo and Rs. 5 per tonne of solid cargo. The balance Royalty will be permitted as a set off against the approved Capital cost @ of the project. The duration of the Royalty Holiday period will extend till such time that the total approved capital cost of the site is set off against the concession in royalty payable. After the end of the Royalty Holiday Period, full waterfront royalty, as per the published schedule, will be payable to the Government for the rest of the BOOT period.

In the case of the Developer undertaking a "Major Expansion" of

the facility, the Royalty Holiday period could be extended by the Government. Maximum of two major expansions would be eligible for this extended concession. The royalty concession will cease automatically on completion of BOOT period as the port will revert back to Government / GMB after the BOOT period is over irrespective of whether the capital cost is completely set off or not.

4. Regulation

The Government will provide for the institution of an independent Port Regulatory Authority in regard to all aspects concerning the working of a port and the sector as a whole. The mandate for the Regulatory Authority will include environmental protection, safety, relief & rehabilitation, issues of security & national interest, protection of port user interests, and any other matter that is of public interest.

(V) TRANSFER OF ASSETS

- | | |
|--------------------------------------|---|
| 1. Duration of the concession period | <p>The duration of the BOOT Package would be 30 years. The BOOT period would commence after three years or the period mentioned in the document by the developer whichever is earlier. The zero date will be date of signing the agreement between GMB and the Developer.</p> <p>A BOOT period greater than 30 years could be considered for projects</p> |
|--------------------------------------|---|

which entail sizable capital investment on account of site specific marine conditions and backup infrastructure such as road/rail linkages.

@ The approved capital cost would be formalised in the Concession Agreement, and would include the construction cost of the project, pre-operative expenses and interest during construction as per the list of items approved by Government / GMB from time to time for a period of three years.

Any expansion entailing an investment of at least 25% if the initial approved Capital cost would be considered a "Major Expansion"

2. Transfer of Assets and Consideration payable to the
- At the end of the BOOT period, the following mechanism would be adopted for the transfer of assets to the Government.
- a) Immovable Assets : The immovable assets would be transferred to the Government for a consideration that reflects the "fair value" of the assets being transferred.
 - b) Movable Assets : The Developer would have the option to take away all movable assets including equipment and infrastructure. In a case where the Developer does not exercise this option the Government would take-over all movable assets for a consideration that reflects the "fair value" of the assets being transferred.
 - c) The "fair value" will be calculated in accordance with a predetermined mechanism to be specified at the time of signing the concession agreement.

(VI) Options After Transfer

The Transfer clause in the BOOT package is necessitated by the State's need to reassert ownership over strategic waterfront. At the time of the Transfer, the Government could choose any of the options given below :

1. Offer the Developer a roll-over option
2. Take over the port and offer it to another Developer.
3. Take over the port as a landlord and farm out services to the private sector on lease or management on contract basis,
4. Take over the port and operate as a full service port itself.

The actual option chosen would depend on the status of the sector and the policy of the Government which may prevail at that time. The BOOT contract would provide the Government with the flexibility to exercise any of these options.

(VII) OTHER ISSUES RELATING TO THE BOOT POLICY

In addition to the BOOT issues listed in the above sections, there are certain additional issues that would be considered by the Government for facilitating the development of the port sector in the State. These issues, and the actions that the Government will consider taking on them, are listed below :

1. DEMAND MOBILISATION

Given that demand mobilisation is the key concern of the Developer, and the most significant risk for a port project, the Government will exercise all efforts to mitigate this risk by undertaking actions to promote industrial development in the region and developing linkage corridors for evacuation.

2. ADDITIONAL INCENTIVES FOR PORT DEVELOPERS

In the case of certain ports, site-specific viability concerns might make it necessary for the Government to enhance the overall viability of the project. Suitable incentives such as attractive concessions for add-on projects can be offered to Developers by the Government in these cases.

On a case to case basis, the Developer may be given permission to develop.

- * Marine related activities such as ship breaking, dry docking etc.
Port based industrial complexes
- * Real Estate in the vicinity of the port.

3. UTILITIES

The Government will play a facilitating role by directing other state agencies to co-operate in the provision of utilities to ensure the successful and timely implementation of the Project. The Government will also take initiatives to provide a single window to the Developer for co-ordinating with all utilities such as water, power, telecom etc. for the port project.

4. PERFORMANCE STANDARDS

The Government will stipulate performance standards for the Developer that seek to evoke international standards of quality, safety and technological enterprise in port operations. However, care will be taken to design these standards such that they do not infringe on the operational flexibility of the Developer.

5. FORCE MAJEURE ISSUES : STATE AND CENTRAL DIRECTIVES

The Government would have the right to issue directives to the Developers in events of national security and national emergency, In case declaration of war with any country or in case of national emergency, the contract agreement shall stand suspended and GMB will take over possession of port and all operational activities of the port, for that period.