Land-Locked To Land-Linked

Lao Roads Public Private Partnership

A pilot PPP in Lao PDR : National Road No. 13

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Ministry of Public Works and Transport of Lao PDR
15-16 September 2014
Vientiane, Lao PDR
Agenda

- Technical Overview
- Project Sections
- Toll Policy
- Next Steps
- Lesson Learnt
Synopsis: Project

• GoL/MPWT are developing 13N and 13S, in line with international best practice and on a pilot PPP basis and line with American Association of State Highway & Transportation Official (AASHTO) and ASEAN standards

• Subsequent to a PPIAF pre-feasibility study (PFS) completed in 2013, a WB/IDA funded Feasibility Study (FS) commenced along with IFC providing PPP transaction advisory services to structure a ‘bankable’ Project and help GoL manage a transparent bid process to select a private-sector developer

• Via a 25 year concession, GoL is looking to implement Phase 1 up to 70km in 13N and 64km 13S; and preparation has progressed significantly, with a preliminary alignment and Project corridor established
Agenda

- Synopsis
- Project Overview
- Phase 1
- Toll Policy
- Next Steps
- Annexes
  - Managing Investments
  - Managing Land Aspects
  - Managing Environmental Aspects
  - Managing Social Aspects
Overview of Phase 1 & 2

• A horizontal topographical survey plan (Plan), longitudinal section and cross sections for the corridor are completed

• The final alignment for 13N and 13S, including the vertical profile, is expected to be completed in end 2014, subject to completion of the ESIA in September 2014.

• FS Consultants completed the work plan for the ESIA in line with the pre-alignment and corridor and is awaiting MONRE approval to commence ESIA for both Phases.

• In Phase 1, in 13N, the 2 lane roadway from Sikeut (14km) to Phanhong (70km) is to be expanded to 4 lanes; and, in 13S, the 4 lane roadway from Don Noun to 21km is to be upgraded and the 2 lane roadway from 21km to Ban Hai Bridge (64km) is to be expanded to 4 lanes.

• In Phase 2, in 13N, the 2 lane roadway from Phonghong to Van Vieng ([70-158]km) is to be upgraded; and in 13S, the 2 lane roadway from Ban Hai to Paksan([64-150]km) is to be upgraded.

• In both Phases, road safety is to be improved and all infrastructure required to implement a toll system (if any) is to be provided.
Phase 1

Legend

13N (A-B): 14-70km

13S Section A (C-D): 12-21km

13S Section B (D-E): 21-64km
Phase 2

Legend

13N (A to B): 70-158km
13S (C to E): 64-150km
Phase 1: 13N (14-70km)

- A preliminary alignment from 14 to 70km for a 56km long 4 lane roadway is established as per the current alignment without any deviations; and a 30m corridor/right of way is required.

- There are 28km of HT and 36 km of LT transmission lines.

- There are 16km of underground cables.

- There are no bridges to be relocated, 2 bridges to be improved and 5 to be replaced.

- There are no forests or plantations.

- There are 1,534 buildings which require classification; 13 schools; 10 sacred sites; 2 burial grounds and 1 medical facility.
Phase 1: 13S (12-64km)

- A preliminary alignment from 12-64km (Km12-21 Improve traffic facilities) for a 52km long 4 lane roadway is established as per the current alignment without any deviations; and a 30m corridor/right of way is required.

- There are 45km of HT and 108km of LT transmission lines; and 26km of underground cables.

- There are no bridges to be relocated, improved or replaced.

- In 13S Section A (12-21km) there are: no forests; no schools; no sacred sites; no burial grounds; and no medical facilities.

- In Section B (21-64km), there are: Road side vegetable from 56-63km and no marshes or estuaries; 35 buildings which require classification; 2 schools; no sacred sites; 1 burial ground; and no medical facilities.
Toll Policy Update

- Tolling Policy Study supported by PPIAF.
- ‘Tolling Principles’ covered the following:
  - tolls as a source of revenue: objectives and “user-pay”.
  - setting the level: how tolls are set and set equitably and proportionately.
  - collection and enforcement: toll payment mechanisms in operation, monitoring violations and enforcement.
- Key considerations for GoL/MPWT relating to tolls:
  - Tolls are a balance between social, environmental and social constraints, ranging from revenue-optimizing to welfare-maximizing- the approach taken will impact on revenue and collection; and may also impact on Project structuring.
  - Additional, stable and dedicated cash flow, which allows resource allocation elsewhere.
  - Tolls should be proportionate to highway use and equitable.
  - May not cover the full construction cost or capital expenditure.
  - Regulations may be required to enforce payment.
Developing a Toll Policy in Lao PDR

- Consider ‘open’ toll system & re-branding of toll highways

- Formulate **draft toll policy document** in line with GoL objectives and via comprehensive stakeholder workshops (including all related Ministries and agencies of GoL)

- **Integrate** tolling principles in FS and consider introducing tolls on 13N and 13S in order to **mitigate revenue risk** as well as increase ‘**creditworthiness**’ of Project
## "Road Map" & Next Steps

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*a* action/decision  
*g* guidance  
*i* info
Likely Project Structure

- Bi/Multi-Lateral Funding
- Loans - Commercial? - Bi/Multi-Lateral?
- Equity - Sponsor - GoL?
- Guarantee/Insurance

Public sector

GoL/MoF

MPI & MPWT

Concession Agreement

Concessionaire

Private sector
Difficulties Encountered and Lesson Learnt

- Overall responsibility
- Entering Into & Procuring a Concession
- Public Sector Investing in the Project
- Managing Social Aspects
- Managing Environmental Aspects
- Project Area & Related Land Aspects
- Managing Revenue (including tolling)
- Other : Dispute Resolution
- Other : PPP Law (continued)
Overall responsibility

- MPWT, as the public road authority, is responsible for the management of (a) land; (b) traffic and land transport; and (c) coordination with other authorities.

- National public roads are limited to a maximum width of 25m from the centre line and no construction is permitted within this area without approval by MPWT.

- MPWT is responsible for removal of illegal structures; it is unclear whether MPWT is allowed to delegate this responsibility to the private sector.

- MPWT may allow the building of “necessary” structures (not defined in law) within the 25m limit.

- The concessionaire shall not own the structures built within the 25m limit; however, the concessionaire has the right to operate and maintain such structures → we recommend that the same be applied to structures outside of the 25m limit.
Entering Into & Procuring a Concession

- Typically, MPI is authorized to sign concessions on behalf of GoL; and MPWT and/or MoF may also be parties to the concession as they have obligations under same.

- Typically, implementing the concession (during construction, operation and maintenance) is the responsibility of MPWT.

- Currently, goods and services are procured under the Government Procurement Decree ("GPD").
  - GPD does not apply to concessions.

- **Concessions** are procured under the Investment Promotion Law (the “IPL”).
  - The IPL provides for the selection of the concessionaire through (a) a comparison of tender bids or (b) assessment of a proposal by MPI.
  - However, there are no specific regulations related to (a) above.

- We recommend that the concession in relation to the Project is procured under the IPL.
  - In consultation with GoL, we will prepare tender guidelines and tender documents in line with international best practice (using methods such as the RfQ / RfP and two-envelope method).
  - In addition, the transaction document (e.g. the Concession Agreement) will be drafted in line with international best practice.
Public Sector Investing in the Project

- The State Investment Law (the “SIL”) will apply if GoL contributes more than 30% or more of the total Project investment.

- The grant of annual availability / viability gap funding or early termination compensation obligations to the Project by GoL may trigger applicability of the SIL, which would require involvement of MoF, the finance sector, as well as budgetary constraints and compliance with the State investment plan and the National Socio-Economic Development Plan.

- Should GoL wish to invest in the concessionaire/project company, details must be included in the Tender Documents and approved by a National Assembly Standing Committee resolution.

- There are no specific laws on “viability gap” funding or “availability payments.”
Private Sector Investing in the Project

- Under the IPL, the private sector may invest in road construction via a concession: it is unclear as to whether operation and maintenance falls within this definition.

- In addition, it is unclear if other related activities (e.g. service stations) also fall within this definition.

- The Concession Agreement should clearly state the nature and extent of the other activities which are permitted.

- In an concession investment, the registered capital of the concessionaire must be at least 30% of the total investment; exemptions may be granted (e.g. hydropower sector).

- A foreign private sector party may invest up to 100% in a concession investment if the registered capital is more than LAK240 billion (USD30 million).

- Where the registered capital is less than USD30 million, the foreign private sector party may only invest up to 49%; the Prime Minister via a decree may exempt this limitation.
Managing Social Aspects

- **Project owner(s)** are defined under the Resettlement Decree as individuals, entities or organizations that have approvals to undertake study, survey, design, construct or operate development projects.
- **Project owners** may be public or private sector or a joint venture between public and private sector.

- The Resettlement Decree requires the Project owner(s) to implement the **Project cycle**
  - The Project cycle is defined as (i) Project identification; (ii) pre-feasibility study; (iii) feasibility study; (iv) Project approval; (v) detailed technical design; and (vi) implementation.

- GoL and a private sector party are Project owners at different times in the Project
- Therefore, the **specific obligations** of both the public and private parties in relation to the Project cycle must be clearly defined in the Concession Agreement, given that GoL has commenced implementation of the Project cycle.

- Under the Resettlement Decree, **affected persons** must be identified and consulted.
- The identification and consultation must be in line with the **World Bank Group standards**

- The Project owner(s) must **compensate** affected persons for loss (including loss of assets, allowances, economic rehabilitation assistance and special assistance to vulnerable groups) in relation to the Project.
- Compensation for land must be based on **“fair-market” value** and in line with World Bank Group standards.
Managing Environmental Aspects

- Currently, the “Project Developer” as defined by under the Decree on Environmental Impact Assessment is GoL and will be the concessionaire post-signing of the Concession Agreement.
- GoL will carry out an EIA study in relation to environmental clearances.
- The concessionaire will have to obtain an Environmental Compliance Certificate ("ECC") before signing any concession agreement or starting construction works.
- The Concessionaire will be in charge of maintaining all environmental permits and authorizations during the term of the concession.
Project Area & Related Land Aspects

- Land is classified into various categories (e.g. communication, agricultural, forest and cultural land)
- For a land category to be changed, it must comply with the National Socio-Economic Development Plan and be approved by the relevant authority – the approval required will depend on the size of the land to be re-categorized
- The “Project owner” is responsible for compensation, resettlement, fees and other charges for any change of land category
- The national community owns all land and GoL may grant rights to own and/or use land to Lao persons or enterprises either permanently (Land Title) or temporarily (Land Certificate)
- Foreign entities may lease land from holders of Land Titles or Land Certificates, or enter into a land lease or concession directly with GoL
- MPWT may provide the concessionaire the right to construct, operate and maintain the Project land via the Concession Agreement; provided MPWT has first obtained the required rights over such land
Managing Revenue (including tolling)

- The **Law on Public Roads** provides that **public road fees may include tolls** and MoF, in cooperation with MPWT, is responsible for studying the rates for road fees and service charges and submitting them to GoL for approval.

- Currently, there are **no provisions** (a) on implementation of road tolls; (b) on whether toll collection rights may be awarded or granted to private entities; or (c) for calculation of tolls and adjustments/review.

- GoL should consider adopting a **road toll regulation via** a Prime Ministerial decree or a law; or include the toll ‘regime’ within the **Concession Agreement**.
International arbitration is recommended since the enforcement of a foreign judgment without a trial is unlikely in Lao PDR.

- Laos is a member of the New York Convention; however, there is no precedent of any enforcement based on international arbitration award.

- As such, we recommend to implement detailed arbitration rules in the Concession Agreement and clearly state that any arbitral award will be binding on the parties.
MPI, in coordination with the Asian Development Bank, is currently developing a draft PPP decree that may impact the Project during its implementation.

We recommend GoL to include a “grandfather” provision in the draft PPP decree clearly excluding the Project from its scope of application.
Thank You