F.No.3A/3/2014-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

New Delhi the July 04 , 2014.

Subject: Record of Discussion of the 55th Meeting of the Empowered Institution for the Scheme for Financial Support to PPPs in Infrastructure (Viability Gap Funding Scheme).

Please find enclosed the Record of Discussion of the **55th Meeting** of the Empowered Institution held on **June 19th, 2014 under the Chairmanship of Additional Secretary (EA).**

Encl: as above.

4/7/14

(Abhilasha Mahapatra)
Director (PPP)

1. **Shri Sourabh Garg**, Joint Secretary, Department of Expenditure, North Block, New Delhi.
2. **Shri Ravi Mittal,** Adviser, Planning Commission, Yojana Bhawan, New Delhi.
3. **Shri James Varghese**, Principal Secretary, Ports Department, Government Secretariat, Thiruvananthapuram-695001.
4. **Shri Shyamal Kumar Mukherjee**, Secretary (Works), Public Works Department, Government of Maharashtra, Madam Cama Road, Hutatma Rajguru Chowk, Mantralaya, Mumbai-400032.
5. **Shri Vivek Agarwal,** Managing Director, M.P. Road Development Corporation Ltd., 16-A, Arera Hills, Bhopal.
6. **Shri N. Muruganandam**, Joint Secretary, Ministry of Shipping, Transport Bhawan, New Delhi.
7. **Shri R.K. Singh**, Joint Secretary, Ministry of Road Transport and Highways, Transport Bhavan, New Delhi.

Copy to:

a. **Sr. PPS** to Additional Secretary (EA)
b. **Sr. PS** to JS (Infra).
c. **PS** to Director (PPP)

(Abhilasha Mahapatra)

F. No. 3A/1/2014-PPP
Government of India
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Empowered Institution for the 'Scheme and Guidelines for Financial Support to Public Private Partnerships in Infrastructure'

55th Meeting on June 19, 2014

Record Note of Discussions

The fifty-fifth meeting of the Empowered Institution (EI), chaired by Additional Secretary, Department of Economic Affairs (DEA) was held on June 19, 2014. The list of participants is attached.

The EI noted that there were five (05) proposals for consideration of viability gap funding (VGF) under the "Scheme and Guidelines for Financial Support to Public Private Partnerships in Infrastructure" (VGF Scheme). Four proposals are for final approval and are from the road sector, one each from Government of Maharashtra (GoM) and Government of Madhya Pradesh (GoMP), and two proposals are from Ministry of Road Transport and Highways (MoRTH). The fifth proposal is for in-principle approval in the seaport sector sent by Government of Kerala (GoK).

The EI noted that the 'VGF Scheme' prescribes that VGF up to Rs. 100 crore for each project may be sanctioned by the EI, proposals for VGF up to Rs. 200 crore may be sanctioned by the EC, and amounts exceeding Rs. 200 crore may be sanctioned by the EC, with the approval of the Finance Minister.

Under the Empowered Institution (EI) for the 'Scheme and Guidelines for Financial Support to Public-Private-Partnerships in Infrastructure' the following proposals were considered:

A. Proposals for consideration of grant for Final Approval

Agenda Item I: Proposal from Government of Maharashtra (GoM), for grant of final approval: Development of four-laning of Hadapsar-Saswad-Belsar-Phata, SH-64, km 9.80 to km 42.86) and Belha-Pabal-Urlikanchan-Jejuri-Nira (SH-6) km 111.0 to km 118 in the State of Maharashtra on BOT (Toll) basis

Total length: 41.06 km; Total Project Cost: Rs. 291.47 crore; Cost of pre-construction activities to be financed by GoM: Rs. 28.61 crore; Concession Period: 25 years with 3 years of construction period.

VGF: VGF quoted by L-1 bidder was higher greater than 40% of TPC, negotiated to Rs. 118 crore, whereas Rs. 116.588 crore is 40% of TPC, which is the maximum admissble under the VGF Scheme; Maximum VGF from Government of India as grant during construction: Rs. 58.294 crore (20% of TPC) and balance and maximum Rs. 58.294 crore (20% of TPC) from Government of Maharashtra as grant during construction, and no O&M support or any other financial support.

Major development works/ structures: Development of four lane portion: 41.06 kms of SH-64, Major bridge (2-lane): 1 (new), ROB Widenining at km 11 to km 12, Minor bridge (4-lane) 13 (9-widening & 4-new), Service roads: 5 of 8.20 kms, Toll Plaza: 1 at km 17 , Vehicular underpasses: 7 (includes two flyyover at Sawad and Jejuri); Bus bays/shelters: 46 (both sides), retaining wall: 2.840 km, Road divider with light cutter: 35.555km, Slab drains: 25; C.D works : 67, Pick up shed: 46

1. Joint Secretary, DEA pointed out that the project was considered and granted in-principle approval by the EI in its 25th meeting held on September 10, 2010. However, as per the proposal submitted for final approval, some of the parameters of the project, as approved by the EI at the 25th meeting have been modified. These have been highlighted in the Appraisal note of DEA, and inter alia pertain to amount of VGF 'Grant' portion which is greater than 40 percent of the TPC, modification of Article 25 of the project's concession agreement and cost variation between the lenders and Sponsoring Authorities estimates in the TPC by around 46 percent. It was explained that as per the present 'VGF Scheme', VGF grant greater than 40 percent of the TPC was not admissible..

2. Adviser, Planning Commission inquired whether Model RFQ and RFP documents had been followed for the procurement process. It was stated that if the model documents have been followed it unclear why negotiations with the L-1 bidder were undertaken to reduce the VGF amount from Rs. 121 crore to Rs. 118 crore asboth of these amounts are greater than 40 percent of the TPC as approved by the EI. Negotiations are not envisaged under the model procurement documents. Information with respect to the L-2 bidder's financial proposal was also sought. Further, information was sought on whether the

change in TPC was approved by the EI. It was noted that modification in TPC had already been approved once by the EI in its 25th meeting from Rs. 238.6 crore to Rs. 291.47 and based on this approved TPC, VGF grant component from GoI was approved upto Rs. 58.28 crore.

3. Chief Engineer, Public Works Department (PWD), GoM affirmed the following:
   3.1. It was stated that the Model documents for procurement had been followed. However, negotiations took place as per directions of the State Finance Department's to lower the bid price as it was above the 40 percent of the TPC. The L-2 bid was for Rs. 150 crore and was substantially higher than that the L-1 bidder's financial proposal, hence, the State Government had accepted the L-1 bid subject to negotiations. The negotiated amount contained VGF component as Rs. 92.52 crore and balance Rs. 25.48 crore was a fixed reimbursement of expenses incurred by Concessionaire for land acquisition, shifting of utilities and buying back of the existing toll plaza.
   3.2. The State Government presently is willing to undertake a supplementary agreement with the Concessionaire for change in TPC to Rs. 291.47 crore and amendment to Article 25 based on the approval earlier received by the EI. It was indicated that a written response to the appraisal notes of the EI members has been provided.
   3.3. Apropos the cost estimations, it was indicated that the estimates undertaken by GoM were based on Pune DSR 2008-09 while the Lender has processed the documents in the year 2013. Hence, the major difference is on account of escalation for 3-4 years.

4. Joint Secretary, DEA noted that while response may have been submitted, these have been provided only an evening before the instant meeting. While detailed examination of the GoM's clarification to the EI members has not been possible due to the response having been sent so late, the issues are being discussed at the meeting. GoM would however have to send clarification to the issues raised. The Chair also stated that detailed reasoning on the components of escalation and justification of the cost estimation may be provided to the members of EI. Further, the reasoning given for negotiating the VGF bid with L-1, bringing it to within the permissible limit is inadequate and needs clarification.

   (Action: GoM)

5. All members of the EI were in agreement to defer the grant of final approval for VGF support to the project until issues discussed and included in the appraisal notes of the appraising agencies is clarified.

6. **The EI deferred grant of final approval to the project until issues raised by the members of EI were resolved. GoM was directed to submit revised**

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responses in view of the discussions held on the date of the meeting for purposes of early reconsideration.

(Action: GoM)

<u>Agenda Item II</u>: Proposal from Government of Madhya Pradesh and Madhya Pradesh Road Development Corporation (MPRDC), for grant of final approval: Development of two-laning with paved side shoulders from Bhopal (km 4.1) to Berasia (km 40.80) and two laning with granular side shoulder from Berasia (km 67) to Sironj (km 0.0), sections of SH-23 in the State of Madhya Pradesh on BOT (Toll) basis.

Total length: 106.90 km; Total Project Cost: Rs. 176.00 crore as per executed CA and Rs. 194.81 crore as per Common Loan Agreement (CLA); Concession Period: 25 years with 2 years of construction period.

VGF: VGF quoted by L-1 bidder Rs. 24.55 crore (13.95%) of TPC of Rs. 176.00 crore.

Major development works/ structures: Major/minor Junctions: 5/37 Nos, Toll Plaza: 2 at Km. 24.000-25.000 (38.90 Km) and Km. 65.000 – 66.000 (68.00), Truck lay byes: 1; Bus shelters: 11

7. **Director** (PPP), DEA informed the EI that the project was considered by EI in its 27th meeting held on November 19, 2010 and accorded 'in-principle' approval with the VGF support of Rs. 35.21 crore which was 20.00 percent of TPC of Rs. 176.00 crore from Government of India.

8. Joint Secretary (Infra), DEA informed the EI that unlike other projects, the Lender's Estimated Project Cost (EPC) is Rs. 194.81 crore i.e. 11% higher than the approved TPC and appears more realistic compared to other projects that have been seen by the EI in recent meetings. The risk of a VGF based on an unrealistic TPC needs to be assessed. However, the reason behind delay in issue of RFQ i.e. @ 1year after in-principle approval of EI; and a further 18 months for financial closure needs to be given.

9. Managing Director, Madhya Pradesh Road Development Corporation (MPRDC) and Secretary, PWD stated that initially the project received a bid for premium and accordingly, the Concession Agreement was executed with the Concessionaire on February 25, 2011. Subsequently, the Concessionaire failed to fulfill its obligations and the concession agreement was terminated. The project was rebid and awarded on a VGF Grant of Rs. 24.55 crore (13.95 per cent of

TPC). The Concessionaire has already achieved financial closure on January 09, 2014 and the construction has been started, there is no risk on the TPC estimate.

10. **Superintendent Engineer** (SE), (PPP), Ministry of Road, Transport and Highways (MoRTH) pointed out that the ROW (52 feet) available for the entire road is inadequate for curve improvements, toll plazas and other facilities. Hence, MPRDC has to acquire additional land for meeting these requirements and also meet the safety standards of the Project Highway.

    Managing Director, MPRDC informed the EI that the actual available ROW for the entire Project Highway is 52 feet on either side i.e. 104 feet. Except land for the proposed toll plazas (10 percent), the balance RoW (90 percent) has been handed over to the Concessionaire for construction before appointed date. Further, Managing Director, MPRDC confirmed that Indian Road Congress (IRC) Guidelines have been followed for finalization for geometrical design and safety requirements.

11. **All** the members of EI were in agreement for granting final approval to the project.

12. **The EI granted final approval to the project for viability gap funding (VGF) of maximum Rs. 24.55 crore (13.95 percent of TPC of Rs. 176.00 crore) from Government of India and nil grant from GoMP under the Scheme.**

(Action: GoMP/MPRDC)

<u>Agenda Item III</u>: Proposal from Ministry of Road, Transport and Highways (MoRT&H), for grant of final approval: Development of four- laning of Mangawan-MP/UP Border Section of NH-27 from km 98.2 to km 46.600 in the state of Madhya Pradesh on BOT (Toll) basis under VGF Scheme.

Total length: 52.074 km; Total Project Cost: Rs. 381.86 crore; Cost of pre-construction activities to be financed by MoRT&H: Rs. 28.86 crore; Concession Period: 30 years with 2 years of construction period.

VGF: VGF quoted by L-1 bidder: Rs. 46.97 crore (12.30% of TPC); Maximum VGF from Government of India as grant during construction: Rs. 46.97 crore (12.30% of TPC) and no other support from MoRTH/Government of Madhya Pradesh/MPRDC.

Major development works/ structures: Major bridge: 1, Toll Plaza; 1 at Km 51.50; Service Roads: 7.2 km; Realignment: 8 locations; Major/minor Junctions: 3/60; No. of Bypasses: 4 (13.1 km); Minor Bridge: 9; Vehicular/ Pedestrian Underpasses: 9/2; Culverts: 87; Truck Lay-bay: 2; Bus Bays: 11 nos; all permanent structures are to be four-laned, Bypasses: 4 (bypasses of 13.1 km); Service roads of 7.20 kms.

Agenda Item IV: **Proposal from Ministry of Road, Transport and Highways (MoRTH), for grant of final approval: Development of four-laning of Satna-Bela Border Section of NH-75 from km 155 to km 203.04 in the State of Madhya Pradesh on BOT (Toll) basis under VGF Scheme.**

Total length: 48.04 km; Total Project Cost: Rs. 320.48 crore; Cost of pre-construction activities to be financed by MoRT&H: Rs. 47.42 crore; Concession Period: 27 years with 2 years of construction period.

VGF: VGF quoted by L-1 bidder: Rs. 31.97 crore (9.97% of TPC); Maximum VGF from Government of India as grant during construction: Rs. 31.97 crore (9.97% of TPC) and no other support from MoRTH/Government of Madhya Pradesh/MPRDC.

Major development works/ structures: Major Bridge: 1; ROB: 1; Toll Plaza; 1 at Km 198.50; Service Roads: Nil; Major/minor Junctions: 4/23; No. of Bypasses: 3 (32.48 km); Minor Bridge: 13; Vehicular/ Pedestrian Underpasses: 10; Culverts: 39; Truck Lay-bay: 2; Bus Bays: 11 nos; All permanent structures are to be four-laned.; Bypasses: 5 of 32.48 km are proposed.

13. Joint Secretary, DEA pointed out that both the projects were considered and granted in-principle approval by the EI in its 33rd meeting held on July 20, 2011. Subsequently both the projects was granted in-principle approval by the EC and recommended by the PPPAC at its 45th meeting held on August 10, 2011. The two proposals being discussed in the meeting for final approval however require clarifications on certain issues such as notification of the Fee and errors in Schedule R of the executed Concession Agreement, as has been pointed out in the appraisal notes in both projects. Also, for Mangawan-UP/MP border proposal, reasons for around 2.5 years gap in-between the release of RFQ and issuance of Letter of Acceptance (LoA) was sought and likewise for the other project. Additionally, for Mangawan-UP/MP border proposal it was noted that the project cost during financial closure is 37% higher than the estimates of the Sponsoring Authority and for Satna-Bela proposal the same was around 50% higher. Thus, detailed reasons for the escalation and costs and difference in the TPCs to be submitted in writing.

(Action: MoRT&H and GoMP/MPRDC)

14. The Chair inquired why the Fee Notification was not issued before commencement of the contract and whether in such cases, the bidder was aware of the delays and thereafter Appointed Date (AD) was declared. Managing Director, MPRDC stated that while MoRTH's Fee Notification policy, on the basis of which toll to be levied is provided,was a part of the bidding documents this fee notification was not project specific, and it is pending for issue.. Revised Fee Notifications and amended Schedule R have been submitted to MoRT&H for isse, being the competent Authority to issue the Fee Notification. MD, MPRDC also clarified that the selected bidders for the both the afroremention ed projects are aware of the delay in issuance of Fee Notifications and AD was declared jointly with knowledge of this delay. The Chair directed MoRTH that Fee Notification for the project and revised Schedule R be issued and provided as a part of the executed Concession Agreement within a period of 30 days of the EI meeting.

(Action: MoRT&H and GoMP/MPRDC)

15. Managing Director, MPRDC in response to issues raised by Joint Secretary, DEA on the delay in issue of LoA for the Mangawan-UP/MP border project stated that this was primarily because the project was bid out twice. First the RFQ was issued on 06.01.2010, validity period for which expired after 120 days since clearance was awaited from MORT&H. MoRT&H thereafter directed MPRDC to invite fresh applications for RFQ, and this was in January 2011. Accordingly, the RFQ was re-issued in February 2011, for which 35 applicants were shortlisted for issue of RFP document. RFP was scheduled for submission on 30.09.2011. MoRT&H in September 2011 informed MPRDC that RFP responses cannot be received till the approval of Cabinet Committee on Economic Affairs (CCEA)/Competent Authority was obtained. Thus, last date of submission of RFP was extended to 02.12.2011. Financial bids were opened on 17.01.2012 and sent to MoRT&H for approval. MoRT&H accorded approval in March 2012 and thereafter the LOA was issued. Thus, the total process took a period of over 2.5 years. The other project on Satna-Bela was also bid twice and a similar process was undertaken as in the Mangawan-UP MP the earlier project. It was stated that a detailed response for the same has been provided to the members of EI. In response to Chair's query on suggestion to streamline the process to reduce the time frame for procurement processes, MD, MPRDC stated that better co-ordination could have been improved between the two authorities to enable early clearances.

16. In response to Joint Secretary, DEA's query over variations in costs, it was stated that, due to a time gap of two and a half years, an escalation amount was factored in by the Lenders. Further, the Lenders assessment of cost of the structures was different The overall cost enhancement is around 37% of the TPC. The Chair inquired whether the project remained financially viable inspite of the cost escalation. MD, MPRDC stated that along with the increase in project cost, the toll fees as per the MoRT&H's Toll Policy have also increased in the same time frames, thus in the overall assessment by the bidder, the project continues to be financially viable.

17. Representative from MoRT&H stated with regard to land acquisition required as per the project's proposal while seeking the approval from the PPPAC, was for an area of 190 hectares (ha). At present in the EI memo it was indicated that land acquisition (LA) for 165 ha. was done and 25 ha. was pending. Whether the remaining 25 ha.

was required or not is unclear. Managing Director, MPRDC stated that the delay was on account of payment of compensation, which was being administered by the MoRT&H. A written response to the same shall be provided for the purposes of record to the members of EI. The Chair stated that MoRT&H being the Sponsoring Authority for the project and MPRDC being its Implementing Agency, in future, such issues should be resolved even before the project is posed to the appraisal committee for approval unless any pending issues or disputes remain which require EI's guidance. This would enable faster decision making as well.

(Action: MoRT&H and GoMP/MPRDC)

18. All members of the EI were in support for grant of final approval for VGF support to both the aforementioned projects.

19. **The EI granted final approval to the project for development of four- laning of Mangawan-MP/UP Border Section of NH-27 for a TPC of Rs. 381.86 crore with total maximum VGF support as Rs. 46.97 crore, and out of which upto Rs. 46.97 crore shall be granted from Government of India under the Scheme, and this approval is subject to issuance of project specific Fee Notification and revised Schedule-R by MoRT&H within 30 days from issuance of these record of discussions.**

(Action: MoRT&H and GoMP/MPRDC)

20. **The EI granted final approval to the project development of four-laning of Satna-Bela Border Section of NH-75 for a TPC of Rs. 320.48 crore with total maximum VGF support as Rs. 31.97 crore, and out of which upto Rs. 31.97 crore shall be granted from Government of India under the Scheme, and this approval is subject to issuance of project specific Fee Notification and revised Schedule R by MoRT&H within 30 days from issuance of these record of discussions.**

(Action: MoRT&H and GoMP/MPRDC)

<u>Agenda Item V</u>: Proposal from Government of Kerala (GoK) for grant of in-principle approval, having its Implementing Agency as Vizhinjam International Seaport Limited (VISL): Development of a minor sea Port at Vizhinjam on DBFOT basis to handle upto 18,000 TEU container ships and rated annual capacity of the Port shall be 10 lakh TEUs in the State of Kerala

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Total berth length: 800m for two berths ; **Total Project Cost:** Rs. 3938 crore; **Cost of pre-construction activities to be financed by VISL:** - Yet to be provided; **Concession Period:** 40 years and extendable by another 20 years including 3 years of total construction period.

VGF sought: maximum 40 % of TPC: Rs. 790 crore (20% of TPC); Maximum VGF from Government of India as grant during construction and another Rs. 790 crore (20% of TPC) by Government of Kerala as construction grant.

Article 25 of the project's DCA: Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority, but shall in no case be greater than 150% (one hundred and fifty per cent) of the Equity, and shall be further restricted to a sum not exceeding 30%.

Major development works/ structures: Proposed capacity is to handle upto 18,000 TEU container ships and rated annual capacity of the Port shall be 10 lakh TEUs; Construct total 800 m of berthing length; Wharf, 60 m wide, quay length of 800 m & 10 lakh TEU annual rated capacity; Dredging of the access channel (20.8 m of CD), navigational channel and at berths (18.4 m of CD); Reclamation of 53 Ha.; Buildings such administrative buildings, yard operations, port marine operations, crane maintenance and O&M, etc.; Utilities and services including power backup, port navigation aids, Sewage/effluent treatment plant, air conditioning etc.; Road (external roads providing connection to NH-47 bypass & internal roads); Project equipments such as RMGC, RMQC etc.

21. The Chair welcomed the first proposal in the port sector to be placed for consideration before the members of EI under the VGF Scheme. The Chair acknowledged that being one of the first proposals to be considered in this sector it may become a precedent to be followed in future and the members of EI are required to exercise due diligence inexamination of the project as given in the proposal for consideration by the EI.

22. Joint Secretary, DEA at the outset stated that the project falls under one of the sectors eligible for consideration of grant under the VGF Scheme. However, many aspects related to the project parameters and structuring and other macro issues need to be analysed and streamlined in line with the VGF Scheme as has also been pointed out in the appraisal notes; some of the main issues would be taken up for discussion at this meeting so that GoK's clarifications could be obtained.

22.1. **Release of Request for Qualification (RFQ) document prior to approval of the EI**: It was noted that the project's RFQ was released prior to approval by the members of EI which is in contravention of the VGF Scheme. Representative from GoK responded that the Model Documents had been adopted for the procurement process. It was their understanding that the RFQ could be released before EI approval of the project and hence the RfQ was released Shortlisting of RFQ has been undertaken and five (5) applicants have been shortlisted indicating markets interest in the project.22.1 Joint Secretary, DEA stated that this understanding of GoK about the Model Document is incorrect. The RFQ documents lays downs the technical and financial eligibility conditions for a project based on a project's structure. The RFQ document as per the Model Document issued by Ministry of Finance (MOF) prescribes that the feasibility report and draft concession agreement (DCA) shall become a part of the bidding documents. The application, in fact, requires at the RFQ stage the applicant(s) to certify that all conditions and compliances shall be as per the bidding documents, including verification of the feasibility report's parameters for project assessment, and obligations listed under the DCA for compliance. Also, the project DCA contains the likely fee or tariff that can be charged under the project for bidders to assess the viability parameters including financial viability of a proposal. Without knowledge of these aspects, the project may attract non-serious bidders, shortlisting of insufficient numbers etc. The bidding process also gets affected if the project's technical and financial parameters change after assessment by members of the EI. Thus, if the RfQ has to be issued, prior approval of the EI is to be sought.Thus the need to examine the project parameters by the EI. The case as it stands presents a 'fait accompli' to the members of EI.

Adviser, Planning Commission supported the release of RFQ prior to the examination by the members of EI stating that this was the first project of its kind in the sector. Earlier projects were approved by the PPPAC in the major port sector were for only for berths to be allotted for concession under PPP mode. The instant project was a green field proposal and may not be financially viable for offering on premium. Joint Secretary, DEA reiterated that viability gap funding can be extended to the proposal after examination of the project parameters and structuring in line with the VGF scheme. The same was agreed to by the members of EI.

(Action: GoK)

22.2 **<u>Policy on capital dredging and reclamation</u>**: Joint Secretary, DEA pointed out that in the proposed project's structure the cost of capital dredging and reclamation of land has been added to the Total Project Cost (TPC). Simultaneously, capital dredging and reclamation has also been added in the 'Funded Works' for the purposes of breakwater and other support. It was stated that at present under the VGF Scheme, cost of land and its acquisition has to be borne by the government, and hence, has been removed from the components of TPC. These costs are on pre-construction activities, which are the obligation of the government and is also reflected in the Model Concession Agreement prevalent in most sectors including major ports. In the major ports sector, generally, these costs on dredging and land acquisition are borne by the sponsoring authority or the government. Also, as the termination payments are linked to the TPC, it would mean that the government/sponsoring authority would be paying termination to the Concessionaire for the costs that the Government has borne having already given a VGF grant for this portion of TPC too. Land- related works may be taken up by the government and under the nomenclature of 'Funded Works' as per the project's DCA. Further, capital dredging in Access and Common navigational channels are part of the Authority's responsibility while at the berth, it is the Concessionaire's responsibility.

22.2.1 The Representative of GoK stated that the capital dredging and reclamation were concurrent activities and separating them may lead to issues on disposal of dredging material. Further, it was indicated that the dredged soil would be utilized for reclamation purposes. Hence, the same was proposed to be a part in the TPC. Internationally as well the same pattern is being followed.

22.2.2 Adviser, Planning Commission stated that capital dredging should be the Concessionaire's responsibility. In certain proposals posed to the Public-Private-Partnership Appraisal Committee (PPPAC), deviations to allow capital dredging by Concessionaire have been cleared.

22.2.3 Director, Department of Expenditure (DoE) added that the Government is already providing financial support to undertake capital dredging to the port authorities hence this activity should be undertaken by the port authorities

22.2.4 The Chair inquired about the policy position from Ministry of Shipping (MoS) on the said issue.

22.2.5 The Representative from MoS indicated that as per the Model Concession Agreement (MCA) for the Major Ports, capital dredging and maintenance dredging is the responsibility of the Sponsoring Authority. However, in the past, deviations have made for such works to be undertaken at the access and navigational channels, essentially differentiating between common infrastructure and berthing structure to be operated by the Concessionaire. The PPPAC has allowed a relaxation based on project/proposal specific consideration as represented by the various Port Trusts. In such cases, capital dredging and maintenance dredging at the common channels or channels to be used by multiple operators together has been allocated to be undertaken by the Port Trusts. While usually maintenance dredging at the berths/jetties/terminal operated by a Concessionaire is to be done by the Concessionaire, in certain cases, even capital dredging at the berths /jetties/terminal operated by a Concessionaire is to be undertaken by the Concessionaire, however, at their own costs, where these costs are usually very marginal . Further, it was stated that in most major ports the Port Trust already owns the land and where required undertakes reclamation or pays for reclamation of land for PPP projects. MOS will be moving a Policy Note shortly to confirm the same.

22.2.6 The Chair stated that it is understood that capital dredging and reclamation has been the government's responsibility and is in accordance with MCA for major ports. The current VGF Scheme does not include the land as a part of the TPC. The Chair requested the representatives from MoS to provide the prevalent policy adopted for capital and maintenance dredging and reclamation of land on Major Ports.

(Action: MoS)

22.2.7 State Government of Kerala was requested for detailed reasons for adopting this proposed structure, where responsibility for capital dredging and reclamation was allocated to the Concessionaire, whereas some elements were allocated to the authority,including international perspectives . All the members of EI agreed that GoK may provide clear project specific justification, for future reference as well.

(Action: GoK/VISL)

22.3 **Capacity augmentation:** Director (PPP) stated that as per the project's DCA, it appears capacity augmentation is to be taken within 30 years or if for five years continuously the throughput exceeds 90% of the existing capacity of the Port. This may lead to severe congestion and the port may not have the capacity to handle increased traffic at this stage. Capacity augmentation should be based on berth exceeding capacity, which in major ports is triggered at exceeding 75 %- the requirement for the capacity augmentation to be met only after the fifth anniversary of capacity exceeding 90% was not understood, given that, construction of the capacity to be created would take another 2-3 years as per normal standards. The clause entails, therefore, congestion for 2-3 years after 90% is reached. The EI sought detailed justification for adopting these provisions.

22.3.1 The Representative from GoK stated that clause 12.7 of the project's DCA did provide for undertaking capacity augmentation the capacity in any time prior to 30 years. These were provisions adopted from the port sector model concession agreement documents provided by Planning Commission, which were based on the provisions of the road sector. These have been approved by the State's Cabinet.

22.3.2 The Chair reiterated that the concerns raised pertain with respect to the specific project and the reasoning for adopting such provisions. The issue raised was related to addressing congestion aspects and not over the legal language adopted in the procurement documents.

The Chair requested Ministry of Shipping to share their views on the same.

22.3.3 The representative of Ministry of Shipping (MoS) stated that, with regards to capacity augmentation, as per the MCA for Major Ports, any additional capacity that may impact the existing port operator's revenue has been classified as 'Competing Facilities' in the MCA. This clause can be retained or removed based on project specific considerations. It provides that a Concessioning Authority shall not operationalise any additional facility for specific cargo within port limits, whichever is earlier, (a) valid for the period of 5 years from 'Scheduled Completion Date' or (b) grants an exclusivity period for the operator, which means that only when annual average volume of cargo handled at the project facilities and services reached 75% of project's capacity for 2 consecutive years. Thus, this structure enables early planning for capacity augmentation and acknowledges the completion in the sector which is specific to cargo.

22.3.4 The Chair added that while this provision on capacity augmentation is tried and tested in the major port sector, justification for not adopting this should be provided by GoK. Adviser, Planning Commission agreed with the views of the Chair and stated that project specific concerns and reasons for adopting particular provisions would have to be provided by the State Government.

(Action: GoK/VISL)

22.4 **<u>Justification on other cost items such as Equipment costs:</u>** Director, DEA stated that Equipment costs of Rs. 1227 crore has been included in the TPC. Justification of the same for the entire period of concession was sought. Further, clarification was sought on whether the equipment would last and serve the proposed concession period of 40 years plus 20 years. It was also stated that if the same is proposed to be augmented at any stage, whether the costs have been included in the financial analysis for the projects life cycle as this would impact the overall financial viability.

22.4.1 The Representative of GoK stated that equipment costs have been arrived at based on the port facility's layout as per the Master Plan. The equipment required has been based on the capacity to cater to average design vessels. With regard to the life of the equipment, it was stated that these generally have a life of around 30 years.

22.4.2 Adviser, Planning Commission stated that one of the reasons for adopting 40 years as concession period was because the general life of equipment was taken as 30 years. Thus, to provide for timely replacement within the concession period, 10 years was added to the normative period of 30 years making it as 40 years.

22.4.3 Joint Secretary, DEA stated that since the financial model of the proposal has not been shared with the members of EI the financial estimates cannot be evaluated. Details on the life of all the equipment envisaged to be utilised for the project along with the capacity augmentation plan and associated equipment costs should be submitted in a tabular format by the Sponsoring Authority/ Implementing Agency, including a note clarifying why the concessionaire would augment / replace equipment at the end of 30 years when the balance concession period is only 10 years.

(Action: GoK/VISL)

22.5 **Concession period**: Joint Secretary, DEA stated that reasons and detailed justification for adopting concession period as 40 years and extendable by 20 years be provided. It was noted that the project's capacity as per the Feasibility report, indicated that the annual rated capacity of 10 lakh TEU would be exceeded in the 8th year. Also, after expiry of 30 year of concession period, major financial gains or large impact on Internal Rate of Return on equity is not envisaged, thus revised project specifics may be examined including assuming a concession period as 30 years + extension of 20 or 30 years. Further, equipment also has a life of 30 years, as per GoK. The revised financial assessment may then be submitted to members of EI for examination.

22.5.1 The Representative of GoK stated that since the project document adapted from the Planning Commission have been utilized, it provided for a concession period of 40 years extendable by 20 years. A revised assessment including financial analysis based on the aforementioned suggestions was agreed to be undertaken. ***(Action: GoK/VISL)***

22.5.2 On the importance of identifying the revenues that would accrue to the Concessionaire Joint Secretary, DEA referred to the Comptroller & General of Audit (C&AG)'s report on the Delhi's International Airport PPP Project. These would also have an impact on VGF calculations, tariff, obligations and rights of the either party. In case the model is based upon international best practices which can be benchmarked, its applicability to this project may be elaborated.

22.5.3 All the members of EI were in agreement that project specific reasons for justifications on adopting the proposed concession period and the identification of revenues upfront should be provided.

(Action: GoK/VISL)

22.6 **Tariff Estimation:** Director, DEA stated that in the documents provided to the members of EI, there are two aspects related to determination of tariff that require to be clarified (a) that tariff is only assessed for a period of initial 10 years (b) benchmarking of tariff has been undertaken to a nearest

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major port. Further, the tariff has not been provided as a part of the project's DCA for bidders to assess financial viability of the project. In addition, the project structure proposes port-estate development for which revenue gains have not been estimated as a part of the financial viability but with a "Revenue Share" element. It was again reiterated that as per the VGF Scheme the tariff has to be pre-determined and for the entire period of concession so that no speculation or windfall gains is encouraged. In addition, any revenue that may reduce the amount of VGF required also needs to be accounted for while assessing the financial viability.

22.6.1 The Representative of GoK stated in the Port sector the user charges are market linked and are changing based on the market conditions. Also, it was indicated that because of intense competition especially with Colombo, the user charges were benchmarked with the nearest Major Port and tariffs at Colombo Port were taken into account. Keeping this is mind, the user charges at the nearest Major Port as provided by Tariff Authority for Major Ports(TAMP), were discounted by 35 percent to arrive at the proposed user charge. These user charges have been factored into the financial model and hence were limited only to initial 10 years. Further, it was stated that the revenue from port estates could not have been estimated as at present that real estate does not exists. This has been added as a sweetener to the project.

22.6.2 Director, DEA stated that open ended port estate development is not supported under the 'VGF Scheme'. Either rentals/tariff/user charges assumed from the port estate development need to be included in viability assessments so that VGF can be rationalised or these facilities /development be kept outside the scope of the instant project. The Chair stated that as the 'VGF Scheme' provides for tariff or user charges to be pre-determined for a project's life cycle period or entire concession period, the tariff is required to be notified by the Sponsoring Authority or relevant competent authority for the entire concession period. All the members of EI were in agreement on the same. The Chair requested Ministry of Shipping to explain to the EI the provision of market linked tariff in Major Ports.

22.6.3 The Representative of Ministry of Shipping stated that base tariff for the project is assessed on a project's parameters including project cost and for a minimum return on equity of sixteen percent as decided by the regulator i.e. TAMP. This tariff is cargo-specific and is a ceiling tariff which the operator based on market response can reduce. In 2013, MoS has provided for a market-linked tariff if an operator successfully achieves the performance indicators set in the concession agreement by TAMP for a continuous period of one past year. In this structure, the operator can then suggest market linked tariff, which is approved by TAMP, after assessment of the meeting of performance indicators. Thus, the operator can charge either higher or lower tariffs within the ceiling limits set by TAMP.

22.6.4 Principal Secretary, Government of Kerala stated that the option of providing user charges upfront and having validity for the entire concession in order to comply with the VGF Scheme will be examined.

(Action: GoK/VISL)

22.7 __**Traffic estimation and cargo wise analysis**__: Director, DEA stated that cargo-wise estimation of traffic at the Vizhinjam Port is not clear. Thus, demand of container cargo may be confirmed including any assessment of competition from neighbouring ports in order to ascertain the traffic viability and revenue sustenance at the Port.

22.7.1 The Representative from GoK stated that cargo to be handled at the Vizhinjam Port is likely to be transshipment traffic. This is traffic that is generated at the Indian ports but being handled at the Colombo port. This project with its natural depth and proximity to international trade route expects to cater to the transshipment traffic currently diverted to Colombo port. It was stated that it was only Vizhinjam Port that offered the combination of natural depth of around –17 m and in proximity to international sea-route. Thus, the project is important from the national perspective as well.

22.7.2 The Representative from Ministry of Shipping stated that at Cochin Port, the **International Container Transshipment Terminal (ICTT),** Vallarapadum was established on similar basis. It was opined that to state that Vizhinjam being closer to the international trade routes than ICTT and therefore better for transshipment traffic is not justified. It was also done at the request of GoK

__22.7.2.1__ Cochin is almost equally close as Vizhinjam (11 Nautical Miles (NM) from the Gulf–Singapore route and 64 NM from the Europe–Far East route) to the trade routes. Moreover, diversion costs matter when they are significant, they cannot determine choice of ports when the difference from the international sea routes is only 11 NM as in the present case.

__22.7.2.2__ Further, it was stated that at ICTT, Cochin at present in order to attract traffic the operators are offering upto 85 percent discount on the ceiling tariff provided by TAMP. Thus, whether with an offering of only a 35 percent discount in tariff at Vizhinjam the port would attract sufficient tariff to justify creation of so much infrastructure in a green-field project. The question of is whether the project would remain viable.

22.7.2.3 MoS representative stated that it to be considered that cargo type and traffic may remain similar at both the ports i.e. ICCT and Vizhinjam thus impacting the traffic at Cochin Port and hence the revenue earning potential for the existing operators and infrastructure already created at the Cochin Port. While the natural depth of Vizhinjam is a natural advantage, the overall development perspective needs to be considered by the members of EI.

22.8 **Bid parameter:** Director DEA indicated that the VGF Scheme provides for only one bidding parameter, which is Grant'. As per the instant project's procurement documents, upfront premium appears to have been used inter-changeably with upfront concession fee. Further, along with grant and port estate development etc., a provision for additional concession fee on revenue share basis with the Authority, from the 15th year has been provisioned as upfront premium limited to 40 percent of total realisable fee. Thus, the bidding parameter is unclear and complex. In addition alongwith the grant, after 15th year revenue share has been envisaged which is also been capped at 40 percent. It is not clear why the capping has been done and the basis for arriving at the figure of 40 %. This project structure needs to be explained and justified with the financial model derived to support the viability of the project and the risk matrix pertaining to the financial clauses and contingent liability of the government. The Chair agreed that the bidding parameter appears complex and needs to be explained with proper rationale.

22.8.1 The Representative from Government of Kerala stated that reasons for allowing revenue share after the 15th year were related to financial obligations of the Concessionaire towards the lenders which may be completed by then. Thus, it was envisaged that revenue surplus would occur thereafter, and hence a share from profits to Government was envisaged. Based on the base concession agreement documents utilized, it was assessed that 40 percent was maximum premium that may be received after the Concessionaire takes into account servicing of operations and maintenance (O&M) and subsequently may be able to share profits, hence the cap of maximum of 40 percent was envisaged. The Chair advised that project specific analysis, factoring the capacity augmentation, effusion of equity, as mentioned above, may be undertaken. This may be based on expected revenues from the project and a matrix may be provided to the members of EI. Further, the basis for this projected revenue share cap, etc is required to be provided to the EI members.

(Action: GoK/VISL)

23 All members of the EI were in support to defer grant of approval until reasonable and plausible justifications were tendered as discussed above and in line with the appraisal notes provided earlier.

24 **The EI deferred grant of in-principle approval to the project. GoK/VISL was requested to submit their considered response to the issues raised during the discussions for the purposes of an early reconsideration of the project.**

(Action: GoK/VISL)

Annex

Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

Empowered Institution for the 'Scheme to Support Public Private Partnerships in Infrastructure'

55th Meeting on June 19, 2014

List of Participants

I. Department of Economic Affairs

1. Shri Dinesh Sharma, Additional Secretary (In Chair)
2. Ms. Sharmila Chavaly, Joint Secretary
3. Smt. Abhilasha Mahapatra, Director
4. Shri V. Srikanth, Deputy Director

II. Planning Commission

5. Shri Ravi Mittal, Advisor (Infra)
6. Shri Praveeen Mahto, Advisor (PPPAU)
7. Smt. Gayatri Nair, Deputy Adviser

III. Department of Expenditure

8. Smt. Saheli Ghosh Ray, Director, PF II
9. Shri A.P.S. Sawhney, Deputy Secretary, PF II

IV. Ministry of Road Transport and Highways

10. Shri Sanjeev Kumar, S.E.
11. Shri Varun Aggarwal, EE (PPP)
12. Shri Rupesh Srivastava

V. Ministry of Shipping

13. Shri Anant K. Saran, Deputy Secretary, (Port Development)

VI. Government of Madhya Pradesh

14. Shri Vivek Aggarwal, Managing Director, MPRDC and Secretary, PWD
15. Shri Surendra Kumar, C.E. MPRDC
16. Shri Arun Paliwal, GM (Finance), MPRDC

VII. Government of Maharashtra

17. Shri Eknath Ugile, Chief Engineer, PWD
18. Shri A.B. Suryavanshi, E.E, PWD

VIII. Government of Kerala

19. Shri James Varghese, Principal Secretary, LSGD & Ports
20. Shri Suresh Babu A.S., Managing Director, VISL