

F. No. 2/8/2019-PPP  
Government of India  
Ministry of Finance  
Department of Economic Affairs  
PPP Cell

North Block, New Delhi  
Dated 21<sup>st</sup> June, 2021

**Office Memorandum**

**Sub: Record of Discussion of the 104<sup>th</sup> PPPAC meeting to consider Ministry of Railways project proposal of 'Passenger Train Operations project on PPP mode'.**

The undersigned is directed to forward the Record of Discussion of the 104<sup>th</sup> Meeting of the PPPAC to consider the project proposal of Passenger Train Operations project on PPP mode held on 14<sup>th</sup> June, 2021 for information and necessary action.

Encl. as above

  
(Kartik Agrawal) 21/6/21

Deputy Director

To,

1. Chairman, Railway Board , Rail Bhawan, New Delhi
2. CEO, NITI Aayog, Yojana Bhawan , New Delhi
3. Secretary, D/o Expenditure, North Block, New Delhi
4. Secretary, D/o Legal Affairs, Shastri Bhawan, New Delhi

Copy to:

1. Sr. PPS to Secretary, DEA
2. Sr. PPS to Joint Secretary (IPF), DEA
3. Sh. Amit Jain, OSD/Private Train Project Cell, Railway Board

## Record of Discussion of 104<sup>th</sup> PPPAC meeting to consider the MoR project proposal of 'Passenger Train Operations project on PPP mode'

The 104<sup>th</sup> Meeting of PPPAC under the chairmanship of Secretary (EA) to consider the proposal of Passenger Train Operations project on PPP mode was held on 14<sup>th</sup> June, 2021 at 5 PM through VC. The list of participants is annexed.

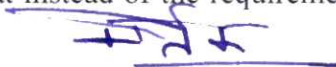
<b>Project Description and its Components</b>	The scope of Project include introduction of 152 pairs of train services by introducing 151 Trains with the right to determine and collect the fares in terms of the Concession Agreement. The Project of operation of 151 passenger trains is divided into 12 (twelve) clusters. Each Cluster includes origin destination pairs that require operation of a minimum of 12 (twelve) rakes.
<b>Estimated Project Cost</b>	Rs.30,099 crore.
<b>Concession Period</b>	35 years
<b>Implementing Authority</b>	Ministry of Railways as Administrative Ministry and Implementation Agency
<b>Approval Sought</b>	Revalidation of "Final approval"

1. JS (IPF) welcomed the attendees to the 104<sup>th</sup> PPPAC meeting and informed that PPPAC had in its 97<sup>th</sup> Meeting held on 29.10.2020 granted 'Final Approval' to Passenger Trains Operations Project of MoR on PPP Mode and recommended the project for the approval of competent authority. However, subsequently, Ministry of Railways in accordance with the deliberations during the pre-bid meetings, proposed certain changes in the bid documents vide MoR OM dated 17.02.2021, 16.03.2021, 03.05.2021 and 02.06.2021. All the proposed changes in bid documents were circulated to the PPPAC members and their comments on the proposed changes and replies of MoR on these comments have also been circulated. As per the established norm, any proposal for changes in the project documents post approval of the PPPAC, require prior approval of the PPPAC, hence, these proposed changes are being put up for consideration of PPPAC. Further, certain changes in the bid documents have already been approved in previous Empowered Group of Secretaries (EGoS) Meetings.

**PPPAC decided not to examine the matters which were already decided by the EGoS in its meetings.**

2. MoR was then invited to make a presentation on the project highlighting the proposed changes in the bid documents and the comments of PPPAC members thereon. It was informed that all issues raised by PPPAC members have been considered and addressed appropriately as submitted in the replies of MoR and only those issues on which require deliberation were taken up for consideration of PPPAC in the following paragraphs. With the permission of the chair, the following issues were discussed during the meeting:

- a. **Requirement for setting up of Training Institute by the Concessionaire:** DEA and DoE suggested that instead of the requirement for the concessionaire to set up a new



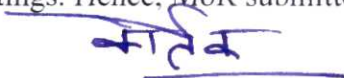
Training Institute, the existing training infrastructure of Indian Railways may be utilised for training purposes. This may result in optimal use of the existing infrastructure and reduction in payout by the GoI to the Concessionaire.

MoR informed that the Concessionaire is required to build a Training Institute equipped with certain infrastructure like Driving Simulator, Computer Based Training and other facilities which will be as per design of the train. As the Concessionaire is required to procure its own trains, these facilities as per the design of the train will not be available in the existing training institutes of Indian Railways. MoR also informed that though MoR would be providing the driver and the guards for the trains, since the trains brought in by the concessionaire would be of world class technology, the training requirements may not be fulfilled in the existing infrastructure of MoR. Further, the training simulators etc. for training purpose would already be procured by the concessionaire as it is usually included in the package for the trains and as such only housing space for simulators is required which can be set up in the Maintenance Depot. MoR also informed that although training may be a recurring expenditure but it is not a significant expenditure in the light of the overall investment required to be undertaken by the concessionaire.

**PPPAC agreed with the views of MoR.**

- b. **Re-invitation of RFQ:** DEA observed that MoR has suggested several changes in the bid documents post release of RfQ documents. Further, in the RoDs of the 95<sup>th</sup> PPPAC Meeting, the following excerpt from a report of C&AG is recorded “In case of PPPs, it is recommended that all pre bid conditions are declared upfront and monetized value of all concessions including assets transferred is arrived at before bids are invited. Any post bid concessions, which are not contemplated earlier, amount to undue favour to the concessionaire. Government should investigate all cases of such post bid actions and fix responsibility.” In the light of above, PPPAC may take a conscious decision with regard to issuing corrigenda or refloating the revised bid documents altogether.

MoR submitted that as decided during 12<sup>th</sup> EGoS dated 31.07.2020 the draft Concession Agreement was shared with the applicants on 10.08.2020 at the RfQ stage. It was clearly brought out that the concession agreement so shared is only a draft of the Concession Agreement (“DCA”), which is being shared for discussion purpose and provisions of DCA are subject to modification at RfP stage. It was highlighted by NITI Aayog that it was only a draft of the concession agreement that was shared with the RfQ, that too for discussion purposes and that the draft contained a disclaimer stating that “information contained herein is neither exhaustive nor final and is subject to change”. MoR also informed that the most significant change was pertaining to the exclusivity clause which was in itself brought about to redress issues raised by the bidders and the change has already been approved by the EGoS in its 14<sup>th</sup> and 15<sup>th</sup> meetings. Hence, MoR submitted that there is no need to re-invite RFQs.



**PPPAC observed that circulation of draft of the concession agreements at RfQ stage was with an express caveat with regard to possibility of further changes in the draft concession agreement and was for the purpose of guidance of the bidders so that they could make a more considered decision and that there is no need to re-invite the RfQs. Therefore, PPPAC agreed with the views of MoR.**

- c. **Mechanism for Indexation of Haulage Charges:** MoR informed that in the 17<sup>th</sup> EGoS meeting held on 10.06.2021, it has been decided to retain existing mechanism of indexation of Haulage Charges and MoR's proposed change of the mechanism of indexation of haulage charges is hence withdrawn.

**PPPAC took note of the same.**

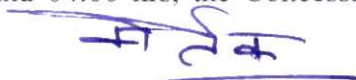
- d. **Mechanism for computation of surcharge for non-conformance:** As per Clause 16.5 of DCA, if Concessionaire fails to comply with a Change of Scope, within time as specified in the Change of Scope Order, the Government may require the Concessionaire to pay a surcharge calculated at a rate equal to 3% (three percent) above Bank Rate compounded annually on the agreed cost of Change of Scope which remains unperformed for the period of such non-compliance for the period of such non-compliance.

DEA observed that Bank rate is variable and also may become an obsolete mechanism during the long concession period of 35 years. It was hence suggested to prescribe an alternate mechanism to cater to the exigency in case RBI stops notifying Bank Rate altogether or starts notifying any other rate in lieu of the Bank Rate.

MoR informed that the existing definition of Bank Rate in DCA, viz., "Bank Rate shall mean the rate of annual interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;" MoR was of the view that the existing definition already addresses the possibility of replacement of Bank Rate and that there is no need of any change in the definition. NITI Aayog confirmed that the existing definition of Bank Rate is as per the definition in MCAs for other sectors.

**PPPAC agreed with the views of MoR and decided to retain the existing definition of Bank Rate in the DCA.**

- e. **'Operational Feasibility' in Clause 12.2.4:** As per this clause, the MoR has the right to modify the Train Operation Plan to reduce the run time. However, if revised Train Operation Plan results in arrival of such Train at the destination Railway Station is between 00:00 hrs and 04:00 hrs, the Concessionaire may propose a change in the



departure time which may be accepted by the Government considering the ‘operational feasibility’.

NITI Aayog observed that the added language in the clause with the use of expression “operational feasibility”– which is a term of rather wide construct–would lead to disputes on account of interpretation, rendering ineffective the remedy being provided. Instead, the clause should be reviewed to provide for a more reliable remedy – i.e., a specific alternate, as is provided for in clause 12.2.5.

MoR explained that the Train operations plan will be required to be examined on request of the Concessionaire if train reaches destination between 00:00 to 04:00 hrs and will have to be considering operational feasibility. Similar stipulation is also available in 12.2.3 which covers speeding up of train due to upgradation of track for 130/160 kmph. MoR informed that many of Indian Railway trains reach destination between 00:00-04:00 hrs. Further, in case of any dispute, the dispute resolution mechanism as per the provisions of the Concession Agreement will be resorted to.

**PPPAC agreed with the views of MoR and decided that no change in Clause 12.2.4 of DCA is required.**

- f. **Date of cessation of Haulage Charges for Surrender of Paths Clause 12.2.5 and others:** NITI Aayog observed that with respect to cessation of payment of haulage charges for the surrendered path the clause states that “In such a case, no Haulage Charges shall be payable for such surrendered Train Operation on that Path from the surrender date stated in such notice.” It would be prudent to provide for cessation of haulage charges with reference to the date of actual surrender. Further, in the second part of the clause providing for increase in the frequency of a non-daily train service in lieu of the path so surrendered, it should be clarified that the same will attract haulage charges as payable in accordance with the terms of the Agreement.

MoR agreed with the views of NITI Aayog to incorporate both the stipulations in the revised Concession Agreement.

**PPPAC took note of the same.**

- g. **Punctuality (Clause 20.2):** MoR informed that the punctuality clause has been drafted basis the following principles: Upto 5% loss of punctuality of a Train in a year on account of each party, no party would be liable to pay any penalty. If loss of punctuality of a Train in a year on account of Concessionaire is more than 5%, then the penalty for loss of more than 5% punctuality on its account has to be paid by the concessionaire and the Government will not pay any penalty even if in such case the loss of punctuality on its account is more than 5%. If loss of punctuality on account of Government is more than 5% and on account of Concessionaire is less than or equal to 5%, the Railway will be liable to pay penalty for loss more than 5% on its account. The Concessionaire is required to pay damages calculated as

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indexed haulage charges for 200 km for every 1% reduction in punctuality of a Train in a year as per above principles. The Government is required to pay damages as indexed haulage charges for 50 km for every 1% reduction in punctuality of a Train in a year as per above principles.

MoR informed that this differential approach has been adopted due to potentially huge impact of delay of a private trains on Indian Railways trains in terms of cascading effect of delays and the effect of the concessionaire breaching its KPIs. MoR also submitted that differential amount of damages payable by Govt and Concessionaire is based on the principle already present in the Model Agreements for various sectors. MoR further submitted that as per the experience of Railways, the chances of delays in trains on account of Rolling Stock account are very low as compared to other reasons, which may be attributable to Railways. As per MoR punctuality statistics of Rajdhani Trains for the month of March 2020, even in case of Rajdhani Trains, the punctuality was only around 81% resulting in punctuality loss of around 19% out of which punctuality loss arising due to rolling stock was only 1%. Accordingly, there is little possibility that the loss of punctuality of a Train on concessionaire account will be more than 5% in a year. However, if it is so, it means that the Concessionaire is not maintaining trains properly which may significantly impact operations of Indian Railways.

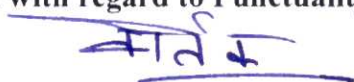
NITI Aayog stated the proposed formulation, allowing both the parties to delay without damages upto 5%, effectively brings down the KPI to 90% from the stated 95%. NITI Aayog suggested that MoR should continue with the original formulation to ensure 95% of Punctuality of a Train, as has also been communicated to the potential bidders. It was highlighted that the KPI clause was developed/included to act as a deterrence against delay, and it is important for the clause to solidify the mandate of 95%.

MoR added that Railways will be responsible for many factors such as Track, Signaling, OHE etc on account of which a private Train may be delayed. However, the Concessionaire will be responsible for only Rolling Stock. So the risks of trains getting delayed on Railway account is significantly higher than that on Concessionaire account.

The Chair asked MoR, how it is going to ensure 95% of the punctuality of Private Trains when there are issues of network congestion and it is not able to do the same for its own Rajdhani group of Trains.

MoR informed that the Private Trains are expected to be introduced in 2023-24. By that time Dedicated Freight Corridors (DFC) of Indian Railways will become operational and part of the freight traffic on trunk routes will be shifted to DFC rendering adequate capacity for operations of private trains.

**PPPAC observed that maintenance of punctuality of Private trains is the responsibility of both Railways and the Concessionaire and hence agreed with the changes in the DCA with regard to Punctuality Clauses as proposed by MoR.**



**h. Waterfall for withdrawal of amounts from the Escrow Account**

NITI Aayog observed that the proposed changes in the waterfall for withdrawal of amounts from the Escrow Account (during the Concession Period and upon Termination) in Clauses 26.3.1 and 26.4.1 (Escrow Account) are in critical deviation from the established prudent practice. The same needs to be reviewed and revised to place project related expenses and items of specific payments such as of concession fee, haulage charges etc. before the general item of “all payments as may be due and payable to the Government pursuant to this Agreement and/ or the Damages certified by the Government as due and payable to it by the Concessionaire;”

NITI Aayog proposed following water fall arrangement in place of the existing one in 26.3.1 of DCA:

The deposits in the Escrow Account shall be appropriated in the following order:

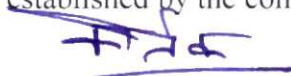
- (a) all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreement or the Lease agreement as the case may be;
- (c) O&M Expenses and other costs and expenses incurred by the Government in accordance with the provisions of this Agreement, and certified by the Government as due and payable to it;
- (d) Station User Fee due and payable to the Government;
- (e) Haulage Charges due and payable to the Government;
- (f) Energy Charges due and payable to the Government;
- (g) Concession Fee due and payable to the Government;
- (h) lease rent that may be payable in the event that the Concessionaire has pro-cured the Trains on a lease basis/ monthly proportionate provision of Debt Service due in an Accounting Year, in case the Concessionaire owns the Trains;
- (i) all other payments as may be due and payable to the Government pursuant to this Agreement and/ or the Damages certified by the Government as due and payable to it by the Concessionaire under this Agreement;
- (j) any reserve requirement set forth in the Financing Agreement; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

MoR agreed with the proposed changes in the water fall arrangement and also informed that similar changes will be carried out in Clause 26.4.1 and Escrow Agreement.

**PPPAC took note of the same.**

3. After deliberations, PPPAC re-validated the final approval granted in its 97<sup>th</sup> Meeting and recommended the proposal for approval of the competent authority with the observations, decisions and conditions:

- a. Training institute to be established by the concessionaire.



- b. No requirement to re-invite RfQs in the light of changes in the concession agreement.
- c. No change in the mechanism of indexation of haulage charges.
- d. No change in the definition of Bank Rate.
- e. No change in Clause 12.2.4 of DCA.
- f. Date for cessation of haulage charges be determined with reference to the date of actual surrender.
- g. For increase in the frequency of a non-daily train service in lieu of the path surrendered, the same to attract haulage charges as payable in accordance with the terms of the Agreement.
- h. Maintenance of punctuality of Private trains is the responsibility of both Railways and the Concessionaire and hence the changes in the DCA with regard to Punctuality Clauses as proposed by MoR are agreed.
- i. Changes in the Waterfall for withdrawal of amounts from the Escrow Account as proposed by NITI Aayog are agreed.
- j. The Bid Documents for the project be revised by the MoR in the light of observations/decisions of the PPPAC and a copy of the revised bid documents be shared with members of PPPAC for record.
- k. The MoR shall ensure that legal vetting of all revised documents – RfP and the concession agreement – is undertaken.
- l. The MoR shall obtain prior approval of the PPPAC for any change in the scope of work or project configuration.

The meeting ended with a vote of thanks to the Chair.

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**Annexure-I**

**List of participants of the 104<sup>th</sup> Meeting of PPPAC to consider project proposal for Passenger Train Operations project on PPP mode**

<b>Sl. No.</b>	<b>Name</b>	<b>Designation and Department</b>
1.	Shri Ajay Seth	Secretary, EA - in Chair
2.	Sh Sanjay Kumar Mohanty	Member Operations & Business Development, Railway Board
3.	Shri Naresh Salecha	Member Finance, Railway Board
4.	Sh Devendra Kumar	Principal Executive Director/Coaching, Railway Board
5.	Sh Amit Kumar Jain	OSD/Private Train Project Cell, Railway Board
6.	Dr. Sajjan Singh Yadav	JS, PFC-I, DoE
7.	Shri B. Purushartha	JS, (IPF), DEA
8.	Sh Partha S Reddy	Adviser/PPP, NITI Aayog
9.	Dr. Molishree	DS (PPP), DEA
10.	Shri Kartik Agrawal	DD (PPP), DEA
11.	Ms Nidhi Arora	Consultant (Legal), NITI Aayog
12.	Dr. R.J.R. Kasibhatla	Deputy Legal Adviser, D/o Legal Affairs