F. No. 2/5/2020-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

North Block, New Delhi
Dated: 12th January, 2021

**OFFICE MEMORANDUM**

**Subject: Record of Discussions of 98th Meeting of PPPAC to consider the proposal of Development (Creation, Upgradation, Operation, Maintenance & Utilization) of BharatNet through PPP granting 'In Principle' and 'Final Approval' Simultaneously**

The undersigned is directed to enclose a copy of the minutes of the 98th Meeting of the PPPAC held on 17th December, 2020 under the Chairmanship of Secretary (DEA) for information and necessary action.

Encl: As above

(Dr. Molishree)
Deputy Secretary to Government of India

To

1. CEO, NITI Aayog, Yojana Bhawan, New Delhi
2. Secretary, Department of Telecommunications, New Delhi
3. Secretary, Department of Expenditure, North Block, New Delhi
4. Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi

Copy to:

1. Sr. PPS to Secretary (EA)
2. Sr. PPS to JS (EA)
3. PS to Deputy Secretary

**Record of Discussion of 98th Meeting of the PPPAC held on 17.12.2020 to consider the proposal of D/o Telecommunication for Development (Creation, Upgradation, Operation & Maintenance and Utilisation) of BharatNet through PPP.**

The 98th Meeting of PPPAC chaired by Secretary, DEA was held on 17th December, 2020 to consider the Department of Telecommunications (DoT) proposal of Development (Creation, Upgradation, Operation & Maintenance and Utilization) of BharatNet through PPP. The list of participants is *annexed.*

**Project: Development (Creation, Upgradation, Operation & Maintenance and Utilization) of BharatNet through PPP.**

**Project Description:** BharatNet is a flagship project under Digital India initiative of the GoI funded by Universal Service Obligation Fund (USOF), D/o Telecommunications, with an aim to provide high speed broadband connectivity to all Gram Panchayats (GP) and now proposed to be extended to all inhabited villages across India.

The network infrastructure under this project shall be a national asset and accessible on a non-discriminatory basis to all eligible service providers to enable them to provide services in rural areas. The proposed PPP Project covers 16 States in 9 packages (comprising of 3.38 lakh villages out of which 1.33 lakh are GPs).

**Estimated Project Cost**: Rs. 29,199 Crores
**Concession Period**: 25 years
Estimated Viability Gap Funding – Rs.19,607 Crore

2. PPPAC was informed that the proposal for "In-Principle" approval has been received from D/o Telecommunications (DoT) for Development (Creation, Upgradation, Operation & Maintenance and Utilization) of BharatNet through PPP. The proposal has been appraised by the PPPAC members & Appraisal Note along with comments has been sent to DoT. The Secretary DoT explained that in this proposal there is no RFQ stage and the bidding is single stage two envelop bidding. He further said that the DoT has submitted the RFP and DCA which has been examined by the members of the PPPAC and recommendations / suggestions received from various PPPAC members have been agreed to by DoT except those which are flagged for today's discussion. Therefore, the Secretary DoT requested, that the PPPAC may give its "In-Principle and Final Approval" simultaneously.

3. JS (IPF) informed the PPPAC that earlier also PPPAC has given "In-Principle and Final Approval" simultaneously. Representative of NITI Aayog said that the RFP and DCA required to be submitted for "Final Approval" of the PPPAC have already been submitted by the DoT and examined by the members of the PPPAC. Upon request of the DoT, the PPPAC decided, for the reasons explained above, to consider the proposal for "In-Principle and Final Approval" simultaneously.

4. The DoT made a detailed presentation explaining that recommendations / suggestions received from various PPPAC members have been agreed to by DoT except those which are flagged for today's discussion. The list of all the recommendations / suggestions accepted for inclusion in the RFP/ DCA have been submitted on 27.11.2020, the key agreed recommendations are as under:

a. Separate RFP and DCA for nine (9) different packages instead of common documentation;

b. Concession Period to be increased from 25 to 30 years with a provision of further extension of 5 years;
c. Maximum VGF grant for each package to be capped and indicated in the RFP as ceiling, above which no bids will be accepted;
d. Non-cumulative net-worth to be considered while estimating financial capacity for bid evaluation across individual Packages;
e. Potential bidders can be awarded with maximum of four (4) packages (excluding North East package)
f. Revenue sharing to be pre-specified i.e., 4% of Gross Revenue of SPV from $11^{th}$ to $20^{th}$year; 6% of Gross Revenue of SPV from $21^{st}$ year to till end of concession period;
g. Technical criteria with experience for construction and O&M partner (s) to be included in RFP (undertaking to be obtained during bidding stage)
h. The RFP is open to international bidders who shall be subject to the extant FDI policy of GoI.

5. Thereafter, the following issues requiring further discussion were taken up with permission of the Chair:

a. **Reservation of two (2) pairs of dark fibre for the Authority and its non-commercial use:** DoT had proposed reservation of two (2) dark fibre pairs for non-commercial usage by the Authority. Comments received from NITI Aayog suggested that this requirement may be dispensed with as the same is not in tandem with the spirit of PPP and would discourage private investors from investing/partnering in the project. DoT mentioned that even in other sectors such as Roads, Government vehicles are exempted from paying user fee and for an auction of fibre cable rights in Gurgaon, the Authority has reserved fibres for itself. In the current Packages, the reservation is only for non-commercial use. NITI Aayog and DEA were of the view that such reservations for exclusive use of the Authority may not be a prudent practice as it may have an impact on the economic / financial viability of the project. After deliberations, PPPAC decided that, in case of future requirement, the Authority/or the State Governments may purchase dark fibre directly from the Concessionaire and there was no need to reserve fibre pairs for the use of Authority / Government in the concession agreement.

b. **Applicability of Public Procurement Order on Preference to Make in India (PMI) under the PPP Model:** DoT informed that as per the discussions held with Department for Promotion of Industry and Internal Trade (DPIIT), it was recommended that Public Procurement Order on Preference to Make in India (PMI) may not be applicable on BharatNet PPP project in line with other PPP projects in Road / Port Sectors. However, to safeguard investments from countries sharing border with India, a provision in the tender documents shall be included to comply with the Rule 144 (xi) of General Financial Rules (GFR), 2017, by the Concessionaire. After deliberations, PPPAC recommended that a formal consent may be obtained by DoT from DPIIT in this regard and relevant modifications in the tender documents be made, if required.

c. **Step-in rights for the Lenders in the Concession Agreement (Clause 5.2.4 of the concession agreement):** It was deliberated that this provision was added in consultation with leading Lenders in the country, for facilitating and improving bankability of the project. NITI Aayog opined that it is not for the lenders to step-in to the Project Agreement and that such a provision is not present in Model Concession Agreements for other sectors and therefore not be to be included herein. DEA stated that since Authority and Concessionaire are the key stakeholders signing the Concession Agreement, Lenders should not be given the step-in rights in Project Agreements as this will over-ride the rights of the Authority provided by the Concession Agreement. Based on the deliberations, PPPAC agreed that the provision of Step-in rights for the Lenders in the Project Agreements is not required and extant provisions of MCA may be followed.

d. **Disclosure of maximum Viability Gap Funding (VGF) payable from the Authority to the bidders (through tender documents):** DoT indicated that disclosure of maximum amount of VGF payable by the Authority to the Concessionaires may lead to a situation where most or all of the bids are close to the maximum amount of VGF indicated by the Authority and hence, restricting the possibility of competitively priced bids. However, DEA mentioned that indicating a cap on maximum VGF amount, that can be paid by the Authority, in the RFP would enable bidders to better evaluate the project and take informed decision with respect to scope of work and as the bids are invited ranging from premium to grant, just mentioning of maximum grant alone may not affect the competition as the RFP has been designed for international competition based only on financial criteria. It was also told that in the VGF scheme of the DEA, maximum VGF admissible is standardised and it is not decided from project-to-project basis. The open competition and market dynamics ensures the least amount of VGF is claimed by bidders which in some cases resulted into premium rather than grant. After deliberations, it was agreed that each RFP would contain a cap maximum amount of grant admissible for the project, as a percentage of Estimated Project Cost beyond which the bids for grants will not be accepted.

DoT informed PPPAC that pursuant to some of the DEA and NITI Aayog's suggestions, they have reworked the financial modelling with changes like '*Concession Period to be increased from 25 to 30 years with a provision of further extension of 5 years*' and '*Revenue sharing to be pre-specified at 4% of Gross Revenue of SPV from 11th to 20th year; 6% of Gross Revenue of SPV from 21st year to till end of concession period.*' In addition, they have also reassessed the funding requirements in the light of *conditions* like >1000 population villages to be on ring/IP-MPLS, terrain requirements (50% of OFC in NER and State of HP to be overhead network), etc. Because of all this, the package wise Estimated Project Cost and respective VGF requirement have undergone change as reflected in the table below: -

| S.N. | States under PPP | Concession Period of 25 years | | | Concession Period of 30 years | | |
|---|---|---|---|---|---|---|---|
| | | Estimated Project Cost (EPC) (INR Cr) | Estimated VGF Requirement (INR Cr) | VGF as a % of EPC | Estimated Project Cost (EPC) (INR Cr) | Estimated VGF Requirement (INR Cr) | VGF as a % of EPC |
| 1 | Package 1 Kerala, Karnataka | 3,399 | 1,456 | 43% | 3,581 | 1,685 | 47% |
| 2 | Package 2 Uttar Pradesh (East) | 4,604 | 1,683 | 37% | 4,607 | 1,575 | 34% |
| 3 | Package 3 Uttar | 1,636 | 604 | 37% | 1,638 | 566 | 35% |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Pradesh (West) | | | | | | |
| 4 | Package 4 Rajasthan | 3,288 | 2,016 | 61% | 3,507 | 2,337 | 67% |
| 5 | Package 5 Punjab, Himachal Pradesh, Haryana | 4,958 | 5,045 | 102% | 4,330 | 3,857 | 89% |
| 6 | Package 6 West Bengal | 1,642 | -932 | -57% | 2,123 | 358 | 17% |
| 7 | Package 7 North East Region (NE-I + NE-II) | 4,284 | 6,272 | 146% | 3,506 | 4,356 | 124% |
| 8 | Package 8 Assam | 1,104 | 639 | 58% | 1,285 | 927 | 72% |
| 9 | Package 9 Madhya Pradesh | 4,285 | 2,824 | 66% | 4,289 | 2,778 | 65% |
| | Total | ~29,200 | ~19,607 | 67% | ~28,866 | ~18,439 | 64% |

DoT explained that based on the recalculations, although the overall requirement of VGF has come down but there are packages where it has gone up.

As per the revised calculations given by the DoT, it is observed that VGF Requirement as a percentage of EPC in 4 packages is below 60% and in three packages it is above 60%. In addition, it is the VGF as estimated by the DoT and bidder's estimation may be different. In such a scenario, there may be a possibility of not getting bidders at all with pin pointed VGF cap for each and every package as suggested by DoT. In such a case, the DoT may need to go to the Cabinet again with revised requirements. It would rather be prudent to put a standard cap on the VGF and let the market forces of competition decide the optimum VGF requirement in each package as being done in the VGF scheme of the DEA.

It was suggested by the NITI Aayog and DEA to keep a cap of VGF of 60% of the EPC cost. It was asked to the DoT whether they see a possibility of getting bidders for packages in which the estimated VGF is more than 60%? The DoT said that in three such packages, the estimated VGF is not much above 60% and in case of Package 5 the difficult area of Himachal is clubbed with two high potential states of Punjab and Haryana, hence, there is a possibility of getting bidders within the cap of 60% VGF.

The DoT said that, in case of package 7 pertaining to North East Region, capping VGF requirement at 60% of EPC may not be feasible. NER terrain is very difficult, the user base is very thin and earlier attempts for laying down network connectivity in such areas have failed due to lack of financial feasibility of the project. It was deliberated that no doubt NER being a special case requires differential treatment if we want to take broadband to NER. However, as the estimated VGF for the entire project period is proposed to be given in first 6.5 years (1.5 years of construction period and 5 years after CoD) of the project. Therefore, if it is more than 100% of the

EPC, government's interest would not be protected in case of project termination after 5 years of CoD for whatever reasons. For NER the reworked estimate is 124% VGF and if the revenue sharing kept only at 1% of gross revenue to be shared from the 11$^{th}$ year onwards till the end of the concession period without any escalation, the requirement may come down by around 5%. Anyhow, it is not making much sense to ask for greater revenue sharing and thereby giving more VGF. In such a case there may be a possibility of getting bidders with cap of 100% VGF of EPC. The DoT agreed to it.

The PPPAC decided that in all of the eight packages (excluding NER package), the maximum VGF should be capped at 60% of the EPC. In case of NER package, the maximum VGF may be capped at 100% of the EPC and the revenue share for NER package would be 1% from the 11$^{th}$ year onwards till the end of concession period. In case no bids are received for the NER region, then alternative mechanism for project restructuring may be explored. The PPPAC also asked the DoT to share the revised calculations in writing.

In addition, it was also decided that for NER package, given the higher ceiling of grant, the concession agreement (inter alia terms pertaining to termination payment etc.) needs to be reviewed and revised, to address the legal and unreasonable commercial implications, if any, of the said higher ceiling.

e. **Methodology for Opening of Financial Bids:** DoT explained that there are two methodologies, namely simultaneous and sequential opening of Financial Bids, for all the nine packages. In sequential opening, the Authority will pre-define the sequence of Packages for opening of the financial bids and as and when a bidder is identified as the L1 bidder in the maximum of 4 packages (excluding North East Package), its financial bids for subsequent Packages will not be opened. Whereas in simultaneous opening, the financial bids for all Packages would be opened simultaneously and L1 bidder identified for each Package. In case a bidder is L1 for more than 4 packages (excluding North East Package), it would be allocated 4 packages (excluding North East Package) as per its choice. For the remaining Packages where the Bidder is L1, the L2 bidder would be asked to match the price of L1 and if L2 declines then L3 would be asked to match the price of L1. The process will be repeated till one of the bidder(s) matches the price of L1. In case no bidder matches the price of the L1, then the project shall be rebid. The proposed methodology is to avoid monopolistic situation where all or most of the packages might get awarded to a single bidder.

DEA and NITI Aayog pointed out that not opening all bids may make the bid process vulnerable to legal challenge(s), in addition to hindering transparent and actual competitive price discovery – the very objective of this bid process. In addition, there would be other problems like possibility of awarding a package on grant where the unopened bids may be offering premium. DEA and NITI stated that the bids opening methodology needs to be a balance between preventing monopoly and competitively discovering the lowest (acceptable) viability gap funding for the project. DEA and NITI Aayog further stated that simultaneous opening of bids should be the preferred option, as it would lead to transparent discovery of the offering of grant or premium for each project. In case a bidder is L1 for more than 4 packages (excluding North East Package), it would be allocated 4 packages with maximum premium or minimum grant on the part of the Government. For the remaining Packages where the Bidder is L1, the L2 bidder would be asked to match the price of L1 and if L2 declines then L3 would be asked to match the price of L1. The process will be repeated till one of the bidder(s) matches the price of L1. In case no bidder matches the price of the L1, then the project is awarded to L1 or is re-bid.

DoT and DoE suggested that in case no bidder matches the price of the L1, then the project may be re-bid to avoid monopolistic situation.

Based on detailed deliberations, PPPAC decided that simultaneous opening of financial bids should be adopted. In case a bidder is L1 for more than 4 packages (excluding North East Package), it would be allocated 4 packages with maximum premium or minimum grant on the part of the Government. For the remaining Packages where the Bidder is L1, the L2 bidder would be asked to match the price of L1 and if L2 declines then L3 would be asked to match the price of L1. The process will be repeated till one of the bidder(s) matches the price of L1. In case no bidder matches the price of the L1, then the project is to be re-bid.

6. During the presentation, there were few additional clarifications which were raised by the PPPAC members. These included the following:

a. **Commercial Operations Date for newly created assets:** It was stated that Concession Agreement document defines Commercial Operation Date (COD) of the Project as the appointed date. DoT clarified that the COD for the project has been defined as the Appointed Date on the basis that Commercial Operations of the existing Phase 1 of BharatNet assets start from first day of Concession. DEA stated that the Commercial Operations Date for newly created assets also signifies an important milestone and hence, COD for newly created assets should also be mentioned in the documents. It was decided that the milestone for commercial operations for the new infrastructure that would be created by the Concessionaire will be specified in the Concession Agreement.

b. **Average Annual Turnover as additional eligibility criterion:** DEA stated that as per the provisions of model RFQ/RFP issued by the DoE, Financial Capacity is generally evaluated based on Net Worth only. Hence, including the Average Annual Turnover as an additional criterion may lead to more restrictive eligibility conditions, eventually leading to lower participation. It was decided to remove the Average Annual Turnover as an evaluation criterion.

c. **Nomenclature for balance VGF payable during first five years of operations**: DEA highlighted that it appears that the O&M support being provided after the completion of construction and that also in a manner which may be more than the actual O&M cost incurred by the Concessionaire and therefore this provision may be amended.

   It was clarified by the DoT that the support being provided after the completion of the construction is not purely the O&M support and is actually the disbursement of the Grant / VGF discovered through the bidding process. The VGF (grant amount) is calculated based on capex, opex and revenue of the project over 25 years. The VGF is disbursed during the construction period (18 months) and also the post construction period (5 years). During the construction period, partial grant shall be given in the form of Equity Support subject to condition that it should not be greater than 40% of the grant or 40% of the estimated project cost or twice the equity infused by the concessionaire, whichever is lower, is disbursed linked to achievement of milestones in Concession Agreement and also debt disbursement by the lenders. The remaining VGF is disbursed in 10 equal half-yearly instalments. It was agreed that to bring in the above-mentioned clarity, required changes in the nomenclature of the grant/VGF be made by DOT.

d. **Inspections and Checks by Third Party Auditor (TPA):** Department of Expenditure, recommended inclusion of a provision for expansion in the sample size, in case the TPA observes more than 20% discrepancies in a sample size of 10%. It was decided that the recommended provision will be included in the tender documents.

7. After deliberations, PPPAC granted the "In-Principle and Final" approval to the proposal for Development (Creation, Upgradation, Operation & Maintenance and Utilization) of BharatNet through Public Private Partnership, subject to the above observations/decisions with following conditions:

a. The Bid Documents for the project be revised by the DoT in the light of observations/decisions of the PPPAC.
b. The entire land, if any, (including for non operational activities also) given to the concessionaire, should be transferred back to the Authority free of cost after end/termination of the concession period.
c. The DoT shall ensure that legal vetting of all revised documents – RfP and the concession agreement – is undertaken.
d. The DoT may ensure that all the applicable clearances required for the project are obtained within the stipulated period of time.
e. The DoT shall obtain prior approval of the PPPAC for any change in the scope of work or project configuration.

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

**Annexure**

**List of participants of 98th Meeting of PPPAC held on 17.12.2020 to consider the proposal of D/o Telecommunication for Development of BharatNet through PPP.**

1. **Department of Economic Affairs, Ministry of Finance**

   a. Shri Tarun Bajaj, Secretary, Department of Economic Affairs (In Chair)

   b. Shri Baldeo Purushartha, Joint Secretary (IPF)

   c. Shri Mukesh Kumar Gupta, Director (IPP)

   d. Dr. Molishree, Deputy Secretary to Government of India, (PPP)

   e. Shri Kartik Agrawal, Deputy Director, (PPP)

2. **Department of Expenditure**

   a. Ms. Anu Kukreja, Joint Director (PFC-II), Department of Expenditure

3. **NITI Aayog**

   a. Sh. Partha Sarthi Reddy, Adviser (PPP)

   b. Ms. Nidhi Arora, Consultant (Legal)

   c. Mr Parthasarthy, Consultant (Public Policy)

   d. Ms Arpana

4. **Department of Legal Affairs**

   a. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor

5. **Department of Telecommunication (Ministry of Communication)**

   a. Shri Anshu Prakash, Secretary, Department of Telecommunications

   b. Smt. Anshuli Arya, Administrator, Universal Service Obligation Fund

   c. Shri Manoj Anand, Additional Administrator, Universal Service Obligation Fund

   d. Shri Deepak Chanduka, DDG (Special Projects), Universal Service Obligation Fund

6. **Transaction Advisory Support (Deloitte)**