


F.No.3A/5/2014-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

New Delhi the, August 19, 2014

Subject: Record of Discussions of the 57th Meeting of the Empowered Institution (EI) for the Scheme for Financial Support to PPPs in Infrastructure (Viability Gap Funding Scheme).

Please find enclosed the Record of Discussions of the 57th Meeting of the Empowered Institution (EI) for the Scheme for Financial Support to PPPs in Infrastructure (Viability Gap Funding Scheme), held on **August 08, 2014**, under the **Chairmanship of Additional Secretary (EA)**.


(V. Srikanth)
Deputy Director (PPP)

1. Dr. Saurabh Garg, Joint Secretary, Department of Expenditure, North Block, New Delhi.
2. Shri Praveen Mahto, Adviser (Infra), Planning Commission, Yojana Bhawan, New Delhi.
3. Shri N. Muruganandam, Joint Secretary, Ministry of Shipping, Transport Bhawan, New Delhi.
4. Shri James Varghese, Principal Secretary, Ports Department, Government Secretariat, Thiruvananthapuram-695001.

Copy to:

1. Sr. PPS to Additional Secretary (EA),
2. PS to JS (Infra),
3. PS to Director (PPP).

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**Empowered Institution for the 'Scheme and Guidelines for Financial Support to
Public Private Partnerships in Infrastructure'**

57th Meeting on August 8, 2014

Record Note of Discussions

The fifty-seventh meeting of the Empowered Institution (EI), chaired by Additional Secretary, Department of Economic Affairs (DEA) was held on August 8, 2014. The list of participants is attached.

The EI noted that there was one (01) proposal for consideration of an in-principle approval for viability gap funding (VGF) under the "Scheme and Guidelines for Financial Support to Public Private Partnerships in Infrastructure" (VGF Scheme). The proposal is in the seaport sector sent by the 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.

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A. Proposal for consideration of grant of In-principle Approval

Agenda Item 1: Proposal from Government of Kerala (GoK) for grant of in-principle approval, with 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

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: 30 years and extendable by another 30 years including 3 years of construction period for Phase 1.

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, as per the EI Memo sent by GoK.

Article 25 of the project's DCA: Article 25 of the project's DCA states that "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.

1. The EI noted that the project had been considered in the 55th meeting of EI held on June 19, 2014, but, was deferred and the EI had indicated the following:
"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".
2. The EI noted that after an initial round of discussions and submission of responses by GoK, the project has been placed for consideration before the members of EI under the VGF Scheme. The Chair requested all the members of EI to share their views on the proposal.

3. Principal Secretary, GoK presented the proposal. It was stated that Vizhinjam Port is posed as an international deep water port and shall be the deepest port in the country. The project is of national eminence and would be the only port in the country to receive largest vessels at present in the ocean. It was envisaged that it shall divert significant business from neighboring foreign ports and therefore has economic significance. It was also indicated that this is the first project to be posed by the State Government for consideration of 'Grant' under the VGF Scheme. Also, the Chair was requested to take cognisance that the Planning Commission has already appraised the project and found it in order and that further discussion may be limited to project compliances aspect only. The Committee may take a view whether other issues raised by DEA are to be considered or not. Thus, GoK requested while giving this overview, that the project may be expeditiously cleared for approval of VGF.

3.1. **The Chair stated that the EI is required to consider all comments and views of all the members of the EI, including on compliance with the VGF Scheme and project specific issues raised by any of the members of the EI, which includes DEA.** Further, the Chair requested the State Government to refrain from comments on the role of DEA and the Planning Commission in the EI process as the GoI is well aware of it as it is a GOI process that is well established.

The main issues discussed were as follows:

4. **Issuance of RFQ prior to EI approval and confirmation by GoK on required compliances:** In the 55th meeting, DEA had stated that prior approval by the EI is a requirement for project documents that are not based upon model documents. This is because, in case non- standard clauses are included in the RFQ and the EI thereafter requires amendments of such clauses, the changes may alter the bid conditions and parameters. This is the standard practice in all EI cases which all members of the EI are aware of.

4.1 Joint Secretary, Department of Economic Affairs (DEA) pointed out that the issue pertaining to release of RFQ prior to its approval by the EI was discussed at length in the 55th meeting of the EI. However, in order to facilitate processing, GoK's confirmation was sought so that changes as advised by EI would be incorporated in the bidding documents prior to receipt of the bids.

4.2 Principal Secretary, GoK stated that as per their interpretation of VGF scheme the proponent can directly submit proposal for sanctioning of VGF without the in-principle approval. However, GoK thanked the EI

for agreeing to consider this project after examination of the project parameters and structuring it in line with the VGF Scheme. GoK is willing to abide by VGF Scheme.

- 4.3 Further, GoK agreed that the changes suggested by EI will be incorporated in the bidding document prior to receipt of the bids in compliance with VGF requirements.
- 4.4 Joint Secretary, DEA stated that this proposal being the first project posed by the State Government under the VGF Scheme, the project/proposal may be supported. Therefore, in view of GoK agreeing to abide by the requirement for change, a one-time exemption can be considered for release of project's RFQ and allied documents but this is not to be cited as precedence. All the members of EI agreed to the same.

(Action: GoK/VISL)

5. Inclusion of costs on dredging, including capital dredging and reclamation as part of TPC for consideration of VGF support:

- 5.1 Joint Secretary, DEA pointed out that in the proposed project's structure part of the cost of capital dredging and reclamation of land have been added to the Total Project Cost (TPC). The balance cost of capital dredging and reclamation, breakwater and other allied works/activities has been included in 'Funded Works'. This is inconsistent. DEA has pointed out that land "acquisition" and capital dredging cannot be treated as the Concessionaire's responsibility, even if he is asked to undertake this task for implementation efficiency. As per the VGF Scheme, cost of land and its acquisition has to be reduced/excluded from the components of TPC for calculating the extent and amount of VGF support.
- 5.2 It was recommended that such works/activities may be taken up by the Government of Kerala under the head 'Funded Works' as per the project's DCA. While the implementation of this activity may be made the responsibility of the Concessionaire, the amount is required to be excluded from the calculation/components of TPC for the purpose of the VGF Scheme. The project's DCA may be modified to reflect the same.
- 5.3 Principal Secretary, GoK was of the view that the VGF Scheme does not explicitly stipulate that dredging and reclamation activities are to be undertaken by the Government nor does it prohibit such costs from being included in TPC. He stated that Land acquisition is being

undertaken at State Government expense and is not part of the Total Project Cost (TPC). Land acquisition and land reclamation (development/ improvement of land) are two distinct activities. Reclamation should be treated as akin to land development (cutting and filling activities for land improvement) and should be part of TPC. Besides the land to be reclaimed is owned by the Government as it falls within the Economic Zone of the sea;

5.4 Joint Secretary, DEA stated that the VGF Scheme is generic and project specific considerations are considered at the time of appraisal and examination of the project documents by the EI members. Reclamation costs (as it is obvious that land underwater cannot be used as is) and ownership of the reclaimed land will vest with the Government so the related costs are tantamount to acquisition costs and cannot be borne by the Concessionaire. GoK has stated that it has divided the costs between 'Funded Works' and Concessionaire's TPC because of shortage of funds with GoK. This cannot be translated into increasing the liability of the Government in terms of TPC. To the statement that dredging and reclamation are not explicitly mentioned in the VGF Scheme, she explained that it must be appreciated that the Scheme guidelines are generic and obviously do not go into project-specific requirements. The requirement is that the capital costs to be underwritten by Government are reasonable and as normally applicable to such projects. EI has applied this principle of consistency to the instant case. GoK was also requested to note that the fact the Scheme does not at all go into elements in a Project cost, whether it is land "development" costs or "acquisition" which are to be undertaken by the Authority and not a part of the TPC.

5.5 Adviser, Planning Commission, in a written statement submitted after the EI meeting, stated that Planning Commission supports the view that capital dredging and reclamation should be part of Total Project Cost and should be borne by the concessionaire, as these are the costs incurred on the development of land and not on land acquisition per se. In all the projects, including national highways, metro rail or airports, land development costs form part of the Total Project Cost and are borne by the concessionaire. Further, this project envisages development of the entire port by the concessionaire and not just a terminal. In case of a terminal project forming part of a port having other terminals, the responsibility of dredging and reclamation vests with the Authority, as it is a common facility applicable to all terminal operators and not just a single operator. In such cases, the Authority recovers its investment on dredging by levying and collecting an appropriate charge. This is generally the pattern followed by Major Ports

who award terminals to several independent operators. On the other hand, state ports are normally operated by a single operator who is also responsible for all capital and maintenance dredging. In this project too, the entire port is to be constructed, developed and operated by the concessionaire and the Authority will not discharge any operational role. As such in the case of Vizhinjam Port Project, dredging, reclamation and their maintenance will have to be the responsibility of the concessionaire only.

5.6 The Representative from MoS indicated that as per the Model Concession Agreement (MCA) for Major Ports prevalent in the Major Ports, *capital dredging and maintenance dredging is the responsibility of the Sponsoring Authority*. Further, it was stated that in most Major Ports the Port Trusts already own the land and in case more land is required, the Port Trusts undertake reclamation or pay for reclamation of land for PPP projects. This reclaimed land is to revert to the Port Trust after the expiry of the Concession period. Thus, land, whether acquired or reclaimed, is envisaged to not form a part of the TPC. However, where the cost of capital dredging has been extremely small relative to TPC, it has been allowed as an exception in a couple of cases for project-specific circumstances not to be treated as a precedent and, moreover, in non-VGF cases. Project-specific deviations have been allowed as indicated in the 55th meeting of the EI. Further elaborating, he stated that with respect to the cases cited by GoK in their reply, as regards the proposal on 4th Container Terminal at JNPT, the Port Authority was responsible for maintaining the channel at Channel entrance. The capital and maintenance dredging in berth pockets and maneuvering area had been allocated to the Concessionaire as dredged area is proposed to be used by the Concessionaire only.

5.6.1 In the case of the proposal of Off shore Cargo Multipurpose berth at Mumbai, the capital dredging was included as part of the project in variation of MCA for Major Ports. This has been included because the cost estimates for capital dredging was considered as it was virtually negligible.

5.6.2 For the proposal of Container Terminal at Tuna Tekra, the proposed project comprised dredging to be carried out in the basin including turning circle, internal navigational channel and outer navigational channel, which are all project specific requirements and in deviation of the MCA for Major Ports.

5.6.3 However, it may be noted that in all these cases cited above, **no VGF or 'Grant' was provided under the VGF**

Scheme- the bidders knew upfront that they shall be using their own resources to fund and undertake these project specific deviations and the selected bidder (s) offered revenue sharing, i.e., 'Royalty' to the Port Authority.

- 5.7 Director, Department of Expenditure (DoE) stated that they support the observations of DEA as presented in the Appraisal Note and further comments. DOE is of the view that as per policy the responsibility of cost of dredging and reclamation should be with the Government Authority since the provision of land, whether acquired or reclaimed, is usually the responsibility of the sponsoring authority in PPP projects. Further, in the instant proposal, since a single Concessionaire is to be selected, these works/activities may be implemented by the preferred/selected bidder or Concessionaire and compensated through the provisions proposed under the 'Funded Works' of project's DCA.
- 5.8 Principal Secretary, GoK stated that the State Government is willing to look at the swap of the costs on capital dredging and reclamation with the cost of construction of breakwater. It was suggested that the costs on construction of breakwater may be made a part of the TPC and costs incurred over capital dredging and reclamation may be removed from the TPC and may be exclusively made a part of 'Funded Works'.
- 5.9 The members of EI, other than Planning Commission, stated that it is the principle of allocation of responsibility and cost that is relevant, not a negotiation on exchanging element/components from one head to another to maintain the "balance" of cost sharing. The Chair stated that consistency of approach has to be maintained by EI based upon well established principles of liability of Central and State Governments and of the Concessionaire. In the VGF Scheme, therefore, the costs on dredging and reclamation are to be excluded from the TPC.

(Action: GoK/VISL)

6. Trigger for Capacity augmentation: Director, DEA reiterated the points as raised in the 55th meeting of EI. It was clarified that the DEA's recommendation was to review the proposed trigger of 90% of the capacity of the Port to avoid port congestion.

- 6.1 Government of Kerala's representative stated that capacity augmentation is mandated in three subsequent phases (Phase II, III and IV), based on throughput trigger and the concessionaire is free to augment it earlier.

