F. No. 2/11/2016-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

New Delhi, the September 01, 2016

Sub: Record of Discussions of the 27th meeting of Empowered Committee for the Scheme for Financial Support to Public Private Partnerships in Infrastructure (Viability Gap Funding Scheme)

Please find enclosed the Record of Discussions of the 27th Meeting of the Empowered Committee held on August 23, 2016 under the Chairmanship of Secretary, Department of Economic Affairs.

Encl: As above

(Abhilasha Mahapatra)
Director (PPP)

1. **Finance Secretary and Secretary (Expenditure)**, Department of Expenditure, North Block, New Delhi
2. **Chief Executive Officer**, Niti Aayog, Yojana Bhawan, New Delhi.
3. **Secretary**, Ministry of Urban Development, Nirman Bhawan, New Delhi
4. **Shri Pankaj Kumar Pandey**, Managing Director, Karnataka State Industrial and Infrastructure Development Corporation Ltd., 'Khanija Bhawan' 4th Floor, East Wing, 49, Race Course Road, Bangalore – 560001.
5. **Shri. Mahendra Jain**, Addl. Chief Secretary to Government, Infrastructure Development Department, Government of Karnataka, Room No. 28, Vikasa Soudha, Bengaluru -560001

Copy to:
1. Sr. PPS to Secretary (EA)
2. Sr. PPS to Additional Secretary (Investment)
3. PS to JS (Infra)
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Empowered Committee for the
Scheme for Financial Support to Public Private Partnerships in Infrastructure

27th Meeting on August 23, 2016

Record Note of Discussions

The twenty seventh (27th) meeting of the Empowered Committee (EC), chaired by Secretary, Department of Economic Affairs (DEA) was held on August 23, 2016. The list of participants is attached.

The EC noted that Karnataka State Industrial and Infrastructure Development Corporation Ltd. (KSIIDC), Government of Karnataka (GoK) has forwarded a proposal for **"Development of Bengaluru International Convention Centre (BICC)"** seeking in-principle approval of viability gap funding (VGF) under the Government of India's Scheme for Financial Support to Public Private Partnerships in Infrastructure (VGF Scheme).

The EC noted that the Scheme for Support to PPPs in Infrastructure prescribes that VGF up to Rs. 100 crore for each project may be sanctioned by the Empowered Institution (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.

Agenda: Proposal from Karnataka State Industrial and Infrastructure Development Corporation Ltd. (KSIIDC), Government of Karnataka (GoK), for grant of in-principle approval of VGF under the GoI's VGF Scheme for Development of Bengaluru International Convention Centre (BICC) on DBFOT basis under PPP mode.

Site Area: 35.0 Acre; Design capacity: Minimum 6000 seating capacity Convention Hall; Total Project Cost: Rs. 1035.00 crore; Concession Period: 30 years including construction period, with the Concessionaire being entitled to an extension of another term of 30 years in the Concession Period

VGF: 20% of TPC (Rs 207.00 crore) from Government of India.

Major development works/ structures: 6000 seating capacity of Convention Hall, Exhibition Centre, Mid-scale Hotel (5 star), Budget Hotel (3 star), Multi-Level Car Parking, Central Park, Business Village, Urban Entertainment & Retail Space, Other Supporting facilities etc.

2. Executive Director, Karnataka State Industrial and Infrastructure Development Corporation Ltd. (KSIIDC) presented the proposal. The EC was informed that Government of Karnataka (GoK) proposed the development of a state-of-the-art International Convention Centre at Bengaluru (BICC); about 35.0 acres of land has been earmarked for BICC (part of 408 acres land owned by KSIIDC) and the land is located along the Bengaluru-Hyderabad National Highway (NH7), with the Kempegowda International Airport forming the immediate southern boundary of the site. The project concept and components have been finalized using a "Green House concept under the Garden City theme". The major components of the project include 6000 seating capacity of the Convention Hall, Exhibition Centres/Halls, Mid-scale Hotel (5 star), Budget Hotel (3 star), Multi-Level Car Parking, Central Park, Business Village, Urban Entertainment and Retail Space, with other Supporting facilities. The RFQ for the project has been issued in September 2015.

3. The Chair, at the outset, inquired whether a second runway is proposed for the Airport and if any land has been reserved by the Karnataka Government for future expansion and whether the plan for the BICC project has taken into consideration the guidelines and regulations for development work in an Airport Zone. Executive Director, KSIIDC stated that the ground work on the second runway has already commenced and additional land has been earmarked for the construction of passenger and cargo terminals. The Project Site is categorized under 'Area of Special Control - Airport Zone' as per the Bengaluru International Airport Area Planning Authority (BIAAPA) Master Plan – 2021, and due consideration would be taken while finalizing the building plan and height of the buildings of the proposed BICC project.

4. Joint Secretary (Infra) stated that while the KSIIDC has given its response to the appraisal of the EC members, there were documentation and project structuring issues related to eligibility for VGF support under the GoI's Scheme for Support to PPPs in Infrastructure ('VGF Scheme') which remain unresolved. These include the issue of Request for Qualification (RFQ) prior to approval by the Empowered Committee, multiple Bid parameters, estimation of Total Project Cost,

non-specification of user rates, specified Concession Period, proposed Scope of Project etc.

4.1 **Bidding Process:** RFQ for the project was issued in September, 2015 and two Applications received on April 15, 2016, i.e. prior to receipt of in-principle approval of VGF support from the Empowered Committee, which is essential under the VGF scheme for projects without Model Concession Agreement (MCA). In response to a point made by GoK, Joint Secretary (Infra) confirmed that "International Convention Centers" are eligible under the VGF Scheme, but no sector specific (MCA) has been issued. Such projects, therefore, require the documents to be examined in detail prior to issuance of RFQ. The EI, while considering proposals on September 4, 2013 for in-principle approval under the VGF Scheme in its 48th Meeting had stated that project documents for sectors in which an MCA is not available have to be scrutinized in detail for project components, configurations, structure, viability, etc., EI/EC members often suggest modifications with reference to the structuring of PPP projects that could cover eligibility criteria, project structure and project scope, etc., which have a bearing on the Business Model, RFQ and the RFP. Such suggestions have ramifications on project viability and, therefore, not just the eligibility criteria but project structure may also require revision. In the past, the EI has recorded strictures against being presented with fait accompli proposals.

4.2 **Bid Parameter**:

i. The document includes the following bid parameters:

   a. Viability Gap Funding (in absolute numbers) with Premium (1% of Total Realized Annual Gross Turnover from the 15th Anniversary of COD);

   or

   b. Premium (proposed % of Total Realised Annual Gross Turnover to be indicated by the Bidder) from the year of COD. Premium shall be increased for each subsequent year by an additional 0.5% of the total Realised Annual Gross Turnover, capped at 30% of Total Realised Annual Gross Turnover.

ii. Further, it is noted that unlike in MCAs, a single Commercial Operation Date (COD) has not been clearly defined/fixed as the draft Concession Agreement for the project provides for 2 CODs viz; COD1 and COD2 for Core Minimum Development Obligations (CMDO) and Other Minimum Development Obligations (OMDO) respectively. Bid evaluation would therefore entail evaluation of two bid parameters and also assessment of two CODs. This is inadvisable and a single Bid Parameter is recommended.

iii. Further, simultaneous provision for VGF and Revenue share is contradictory. Joint Secretary (Infra) also stated that basis for specifying a 0.5% increment of Revenue share and ceiling of 30% of the Total Realized Annual Gross Turnover in Revenue share has not been explained. Chair stated that the bid parameter is complex and needs to be simplified. The VGF Scheme provides for a single bid parameter which is the amount of grant required for the project.

4.3 **Project Structure and Scope of Work**: The scope of the Concessionaire includes development of CMDO (Convention Centre and Exhibition Halls), OMDO (Hotels, Multi-level Car Parking, Retail, Commercial development, etc.) and Optional Permissible Facilities (Other facility subject to fulfilment of CMDO and OMDO, and availability of land on the Project Site, as permitted in accordance with the Applicable Laws) with Total Project Cost (TPC) of Rs 1035.0 crore. Joint Secretary (Infra) stated that the development cost of Convention Centre (Rs 1,51,813/sq.mts.) is much higher in comparison with rates of about ten other International Convention Centres proposed by various states. The other supporting activities appear to be viewed only as additional revenue sources. Further, commercial land use for making the project viable and provision for grant support as per the Guidelines for Financial Support to PPPs in infrastructure, i.e., the VGF Scheme cannot go together. Chair commented that the plethora of Community Centres proposed by various States indicates unrealistic optimism in estimation of clientele. However, Bengaluru in this context could be a good location, though commercial land use has to be assumed as potential revenue streams for the Project, especially given comparators from other States none of which is on the VGF basis.

4.4 **User Fee**: The proposal for BICC provides for the Concessionaire to determine, demand, collect and appropriate Fee based on market-driven rates from Users. Chair stated that the VGF Scheme makes it mandatory to fix a benchmark price /user tariff for the project (if Grant is sought by the Selected Bidder). Revenues based on pre-determined rates/tariff determine the quantum of VGF required for a project as increase in revenues reduce the requirement of VGF. The VGF Scheme therefore requires pre-determination of tariff so that revenue streams are known upfront. In the present case revenue estimates are unknown; there is also no clarity on the effect of revenues of the other commercial activities, proposed to be allowed, on the VGF estimation. This is essential from the perspective of the VGF Scheme, to ensure transparent bidding process as any windfall profits at a future date would call into question the rationale for permitting such activities and providing VGF in the first place. However, the Chair also stated that for high-end or business hotels, it is neither

advisable nor realistic to fix the rate and these should essentially be market-driven.

4.5 **Grant of Concession**: The Concession is for 30 years with a provision of for extension by another term of 30 years, without laying down any terms and conditions for the extension. Joint Secretary (Infra) stated that the basis for the additional Concession Period of 30 years is unclear. The Project Viability is levy for any such determination and clear terms and conditions are essential at the bid stage to avoid ambiguity and to provide a level playing field for all bidders. Advisor, Niti Ayog stated that the VGF Scheme requires that the Concession period is fixed and for the Project Authority to certify that the project term cannot be increased for reducing the VGF. The concession period has a bearing on the viability of the project and the extent of VGF required; clear terms and conditions are essential in bid documents including for any extension.

4.6 **Project Documents**:

4.6.1 KSIIDC stated that the "Model Concession Agreement (MCA) for PPP in Airport Terminals" published by Niti Aayog (April 2014 Edition) was followed to draft the Concession Agreement for the project and was customized for the project specific changes. Chair asked whether this said MCA is an approved document and if it is for Convention Centre. Advisor, Niti Aayog stated that the referred document was merely a "Best Practices" document developed by the erstwhile Planning Commission. MCAs are issued only after the consultations by an Inter-Ministerial Group approved by the Minister in Charge of the line Ministry/Department/ CCEA, as the case may be. They also stated that it is unclear why a document for Airport Terminal concessions has been used for drafting the Concession Agreement for a Convention Centre and other additional facilities.

4.6.2 Advisor, Niti Aayog further stated that even though KSIIDC has stated that the Draft Concession Agreement (DCA) of BICC is based on the document developed for PPPs in Airport Terminal, several conceptual and project specific deviations have been made to key provisions such as Obligation of the parties, Representation and Warranties, Key Performance Indicators, Financial Closure, Insurance etc.. In addition, changes have been made to standard terminology; Niti Aayog pointed out a number of discrepancies in the DCA. Examples: two CODs (COD1 and COD2) have been defined and linked to multiple indicators, i.e., release of Performance Security, Operation Period, Damages for delay, payment of Premium, collection of User Fee, Adjusted Equity etc.

4.6.3 Joint Secretary (Infra) stated that the concept of "core" and "other" obligations i.e. CMDO, OMDO, Other Permissible activities, COD1 and COD2 are not clear. Further, there is also a provision for payment of Additional Termination Payment (for "Specified Assets") to be created after the COD), for further value addition to the Project. This is not only unclear, it contradicts the requirement for clearly defining the Scope of Work and Concession period in PPP projects.

4.7 **Obligations relating to Golden Share**: Joint Secretary (Infra) pointed out that the proposal requires the Concessionaire to issue and allot one non-transferable equity share of the Company (the "Golden Share") in favour of the Authority. The need for this and involvement of government nominee in the project SPV is not recommended unless there are concerns related to security issues and for safeguarding of national interest. Reference was drawn to the recommendation by the Committee on "Revisiting & Revitalizing the PPP model of Infrastructure" in this regard. The Committee had stated that such participation in the PPP Project Company may be discouraged, save for well-articulated strategic reasons so as to enable independence in functioning of the company to gain from private sector efficiencies while maintaining arm's length from the government.

5. Addl. Secretary, DEA cited the discussions during a recent meeting taken by the Cabinet Secretary to take a view on finalization of the project structure for the proposed International Convention Centre at Dwarka. He opined that the proposed segregation of commercial activities may be sub-optimal. Instead, the project may be developed as a real estate development project with appropriate land monetization. Accordingly, the entire project could perhaps be funded through commercial exploitation of the site.

6. Secretary, MoUD while endorsing the views of Niti Aayog and DEA, stated that even though Convention Centers are commercial ventures, they are not financially viable propositions as stand-alone facilities. Hence, additional components for commercial activities like hotels etc., have been proposed in the subject proposal such that they functionally and economically complement the Convention Center and provide for integrated development. KSIIDC may work out options for project implementation including land monetization to improve viability instead of seeking grant funding. Advisor, Niti Aayog supported the suggestion and stated that the project structure proposed by KSIIDC is not amenable to the GoI's VGF Scheme.

7. The Chair concluded that the proposed project structure as construed by KSIIDC i.e. development of International Convention Centre along with Retail, Commercial development and other entertainment facilities etc. does not appear to fall in the category of PPP projects. Further, in terms of DEA's VGF Scheme, the essential requirement of pre-determination of tariff for estimation of the VGF is not met. In PPP projects, the tariffs are usually fixed by the regulators/ through a pre-defined mechanism under the extant guidelines. The tolls/tariff in road sectors, port sectors PPP projects are pre-determined and fixed by the appropriate tariff fixing authorities. It appears that in the present case, market determination of the tariff, especially for hotels, is a more viable and practical option. In order to consider the proposal under the Scheme, the entire project structure would therefore need to be restructured. In this case, the RfQ was issued prior to EC's in-principle approval of the VGF support. As pointed out by the EC members, there were basic deficiencies even in the RfQ related to the bid parameter and eligibility criteria. Changes after issue of RfQ, especially in the project structure, are not appropriate, especially when they would entail changes in the project structure and project documents.

8. The EC agreed that KSIIDC has the option to develop the BICC as a purely commercial project with flexible project components and annual premiums/ Revenue share as the bid parameter, letting market forces decide on the tariffs/rates. Members of EC were in agreement that the present proposal was not eligible for VGF support under the GoI's Scheme and Guidelines for Financial Support to PPPs in Infrastructure.

9. **EC decided that the project of Karnataka State Industrial and Infrastructure Development Corporation Ltd. (KSIIDC), Government of Karnataka (GoK) for "Development of Bengaluru International Convention Centre (BICC)" as presently structured, cannot be considered for grant of in-principle approval of VGF support under the GoI's Scheme and Guidelines for Financial Support to PPPs in Infrastructure.**

10. The meeting ended with a Vote of Thanks to the Chair.

Annex

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Department of Economic Affairs
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Empowered Committee for the
Scheme to Support Public Private Partnerships in Infrastructure
27h Meeting on August 23, 2016

List of Participants

I. Department of Economic Affairs

1. Shri Shaktikanta Das, Secretary (In Chair)
2. Shri Ajay Tyagi, Additional Secretary (Investment)
3. Ms. Sharmila Chavaly, Joint Secretary(Infra)
4. Ms. Abhilasha Mahapatra, Director(PPP)
5. Ms. Seema Jain, Dy. Director(PPP)

II. Ministry of Urban Development

6. Shri Rajiv Gauba, Secretary

III. NITI AAYOG

7. Shri Praveen Mahto, Advisor

IV. Government of Karnataka

8. Shri Atul K Tiwari, Resident Commissioner, New Delhi
9. Shri N.R.N. Simha, Executive Director, Karnataka State Industrial and Infrastructure Development Corporation Ltd.(KSIIDC)