

**Ministry of Finance**  
**Department of Economic Affairs**

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**Public Private Partnership Appraisal Committee (PPPAC)**  
**10<sup>th</sup> Meeting on May 11, 2007**

**Record Note of Discussion**

The 10<sup>th</sup> meeting of the Public Private Partnership Appraisal Committee (PPPAC) was held in North Block, New Delhi at 2.30 PM on 11.05.2007. The list of participants is annexed. The following projects were considered by PPPAC:

- (i) 6-laning of Surat-Dahisar Section of NH-8 (239 Km) in Gujarat and Maharashtra
- (ii) 6-laning of Panipat-Jalandhar Section of NH-I (291 Km) in Haryana and Punjab
- (iii) 6-laning of Chilkaluripet-Vijayawada, including Guntur bypass and Mangalagiri bypass of Chennai-Vijayawada Section of NH-5 in Andhra Pradesh
- (iv) 6-laning of Chennai-Tada Section of NH-5 (43 Km) in Tamil Nadu
- (v) 6-laning of Gurgaon-Kotputli-Jaipur Section of NH-8 in Haryana/Rajasthan on BOT (Toll) basis following by DBFO pattern
- (vi) 4-laning of Walayar to Vadakkancherry Section (Package No.NS-2/BOT/KL-2)
- (vii) 4-laning of Vadakkancherry to Thrissur Section (Package No.NS-2/BOT/KL-3)

2. The PPPAC, in the first instance, considered issues common to the seven projects submitted for its appraisal and decided as follows:

- (i) Equity Financing Plan: It was stated that the bidding process proposed by NHAI included submission of an Equity Financing Plan and the final selection would be subject to the availability of demonstrated financial capacity of the L1 bidder. While the advantage of such an approach is that the availability of funds is ensured for the selected bidder, the disadvantage is that the

information sought under the Equity Financing Plan is detailed and subjective. Firstly, the confirmation of the banks for the funding is at best indicative and not binding and also valuation of certain other sources of revenue like liquidation of real estate is based on untested assumptions. Introducing such a subjective analysis not only runs counter to the guidelines approved by the COI for pre-qualification of bidders, but also confers no apparent benefit. Thus it was advised that the said provision should be deleted. Chairman, NHAI agreed to the deletion of the requirement of submission of Equity Financing Plan at the RFP stage.

- (ii) Single stage bidding: It was indicated that while NHAI was following a two-stage bidding process in case of projects submitted under NHDP-V, only a single stage bidding process was being proposed in the case of the two projects submitted under the NHDP-II as against the PPPAC decision to follow only two-stage bidding. It was noted that Secretary, Department of Road Transport and Highways (DORTH) had forwarded a copy of the Note for Cabinet wherein dispensation from CCEA from following the two-stage bidding has been taken for NHDP-II and III. Both DEA and Planning Commission indicated that they were not aware of this decision as the Note was not circulated for comments. Secretary, DORTH explained that DORTH and NHAI were of the view that the two-stage bidding was a better option to follow than the single stage bidding, even if in some cases, because of time constraints, it was necessary to permit single stage bidding. The decision to follow single stage bidding was taken for those projects where the DPRs were ready and following a two-stage bidding may delay the bidding process. However, NHAI and DORTH were requested to adopt the two-stage bidding in case of all the remaining projects under NHDP - II & III where the RFQ could commence, when possible.
- (iii) Bid validity period: It was indicated that the bid validity period provided both in the case of single stage and two-stage bidding is 280 days with the option to NHAI to extend the same indefinitely without any recourse to the bidders. While 280 days may have been relevant for a single stage bidding where all the proposals are sought at one go, for the two stage bidding process, where the financial offer is sought only after technical qualification, such a long bid validity

period is not warranted and in these cases a period of 120 days would be sufficient. Also the option to NHAH to extend it indefinitely would appear to be unfair. NHAH agreed to reduce the bid validity period to 120 days for two-stage bidding and remove the option to NHAH to extend the bid validity period indefinitely without the consent of bidders.

- (iv) Post bid negotiations: It was indicated that the RFP provides for negotiations with the L1 bidder which is against the extant guidelines and should be deleted. Chairman, NHAH explained that such a provision enables NHAH to enter into a dialogue with the L1 bidder if the bids are significantly outside the range estimates prepared by NHAH. Additional Secretary (DEA) argued as follows: first, such an estimate should be internal to NHAH, and second NHAH could take an administrative decision for entering into such a negotiation without making a statement to this effect in the RFP. Department of Expenditure explained that for foreign investors such a provision is extremely discomforting. NHAH agreed to delete this provision from the bidding documents.
- (v) Land acquisition: It was indicated that in the case of the two NHDP-II projects, the extent of land available has not been indicated. NHAH clarified that more than 60% of the land is available for these projects. NHAH was requested to indicate the availability of land in the bidding document.
- (vi) Statutory clearances: It was indicated that the Memorandum for PPPAC for the five projects under NHDP-V states that clearance required from State Government and local bodies would be taken as required. It is not clear what clearance, if any, are required and which is the party responsible for obtaining these clearances. In the case of the two projects under NHDP-II, it was indicated that clearance required from state governments, and local bodies would be obtained by Concessionaire/NHAH as required. He explained that the clearances required need to be listed and above all statutory clearances should be the responsibility of the NHAH. This would improve the bidding conditions and enable better bids. NHAH agreed to list these clearances and make the list part of the Concession Agreement. As regards the responsibility for obtaining the clearances, NHAH explained that the bidder is better placed to obtain

these than NHAI. However, it was explained that the obligation should rest with the NHAI to ensure that the failure to obtain the same would not constitute a default on the part of the Concessionaire. NHAI agreed to follow the MCA provisions and delete the reference to the Concessionaire for obtaining all statutory clearances.

- (vii) Project cost: It was indicated that the Manual of Standards and Specifications has not yet been issued by DORTH. As a result it is difficult for PPPAC to appraise project costs. Planning Commission indicated the chronology of events relating to finalisation of the Manual of Standards and Specifications that indicated that the same has been much delayed despite assurances given by DORTH and NHAI at the meetings of the COI and other fora. Given the importance of the Manual for determining project costs to avoid aberrations while determining individual project costs and the consequent obligations assumed by the GOI in such projects as contingent liability, it was impressed upon NHAI that the Manual should be issued at the earliest, Chairman, NHAI stated that though the IRC has issued a Manual but the same needs to be revised as there are several lacunae in it. He further informed that the Manual is at final stages of approval and for four-laning it would be issued on 30<sup>th</sup> May, 2007 and for six-laning it would be issued on 15<sup>th</sup> May, 2007. As regards the projects being considered by PPPAC, it was confirmed that Schedule-D of the concession agreement was reflective of the Manual being finalized by NHAI. It was decided that the PPPAC would approve the projects based on the Schedule-D submitted with the proposal, and since the Manual is to be issued shortly, any changes proposed in the Manual that is different from the Schedule-D would be incorporated by NHAI prior to the issue of RFP.
- (viii) Project specifications: Representative of Planning Commission indicated that the Feasibility Report (FR) submitted by NHAI was prepared by a private consultant and there is no process of approval of the same within NHAI or DORTH. It was indicated that in the FR submitted for the above projects, there is a provision for the Concessionaire to bear the cost of provision to NHAI officials with cars of certain makes, fuel, telephones and foreign training for NHAI engineers. It was explained that the issue was internal to the NHAI

but any proposal forwarded by an administrative Ministry to PPPAC necessarily bears the approval of that Ministry. As regards the issue of loading the costs of provision of cars, fuel, telephone and foreign training to NHAI officials, it was agreed that this was not admissible and NHAI receives an agency fee which should be used to meet these costs. If the agency fee does not suffice to meet these expenses, NHAI, in consultation with DORTH, could decide on increasing the agency fee to fund these costs. NHAI agreed to delete these provisions from the FR.

- (ix) Bidding parameter: It was stated that for the NHDP V projects, NHAI propose to adopt upfront grant as the bidding parameter instead of revenue share as contained in the Model Concession Agreement (MCA). Chairman, NHAI explained that the change has been proposed in view of toll evasion by the concessionaries and the resultant loss to NHAI in revenues. Joint Secretary (DEA) explained that with current advancement in technology, it should not be difficult for NHAI to avoid toll evasion by the concessionaires. It was decided that since revenue share on such profitable stretches would enable maximization of the revenue of the Government, NHAI should adopt revenue share as the bidding parameter and take corrective steps to avoid toll evasion by the concessionaire. NHAI agreed to this. However, the issue could be further discussed and if found beneficial, this model could be tested in a few pilot projects in the future.
  
- (x) Concession period: It was indicated that irrespective of the current levels of traffic the concession period continues to be 15 years for all the projects, which should be a factor of the carrying capacity of the project highway and not the financial returns estimated. Thus for those projects where capacity exists, a longer concession period may attract better bids and for highways and where capacity constraint is reached earlier a shorter concession period may suffice. Chairman, NHAI explained that the concession period has been determined based on financial projections. It was decided that this issue may be examined further by NHAI/DORTH to determine whether “traffic” projection could be a better alternative as a parameter.
  
- (xi) Information on toll revenues: It was stated that the projects under NHDP V were being presently tolled as four lanes and the figures of

toll collected for the last 3 years should be indicated in the bidding documents to enable the prospective bidders to make a more informed bid. NHAI agreed to give these figures in the bidding documents.

(xii) Security of toll revenues: It was indicated that in the case of the NHDP V projects, since projects with on-going revenues are being handed over to the concessionaire who would have access to toll revenues from the appointed date itself instead of completion of the construction, safeguards for the security of these sums which are expected to be substantial and for the revenue share of Government prior to commercial operation should be ensured. He explained that this also becomes necessary as NHAI would increasingly be adopting revenue share instead of upfront grant as the bidding parameter. Chairman, NHAI explained that since an on-going project with revenue generation potential is being transferred to the concessionaire, it is proposed to have a separate Escrow Agreement prior to commercial operation that will safeguard the toll revenues. It was explained that a separate Escrow Agreement for this purpose is not required and the escrow agreement provided in the MCA should suffice with necessary medications relating to date of operation and draw down schedule. Joint Secretary (DEA) explained that the Escrow Agreement, being a private account, would not be a sufficient safeguard and NHAI should enhance the performance guarantee. NHAI explained that the banks ask for a margin money for 25-30% for such a guarantee that would unnecessarily jack up the costs. It was explained that while the disbursement from the Escrow Account could be stalled by the concessionaire in the event of a dispute in case of performance guarantee the bank would be obliged to pay the guarantee amount in case so claimed by NHAI. It was noted that such a guarantee has been provided in case of the airport projects in Mumbai and Delhi which were also projects of similar nature with on-going revenue potential for the concessionaire. It was decided that considering the balance of convenience, a single Escrow account may be used for the Pre-COD and Post-COD operations. The level of performance guarantee presently envisaged could also be enhanced.

(xiii) Tolling: It was indicated that the new Toll policy is still not in place pending which the bids cannot be invited. Chairman, NHAI

indicated that the Toll policy is in place, albeit certain provisions which have undergone a change consequent to the decisions of a COS, and all that needs to be done is to replace the existing figures etc. in the Toll policy by the new figures approved by the COS. It was agreed to issue the bidding documents with the old Toll policy with new figures in place. Secretary DORTH agreed to approve such a document. The new Toll Rules will also be issued within the next 60 days.

- (xiv) Modifications in the MCA: It was noted that NHAI had proposed modifications in the MCA on account of change in the bidding parameter and escrow account. Since these proposals have not been accepted, the only consequential change in the concession agreement with respect to the MCA would be to change the date of toll collection with effect from the appointed date and extend the level of performance guarantee. As regards the escrow account, there would be a single account with additional conditionalities of draw down, if necessary. The only change admissible would be to allow the Concessionaire to charge the tolls from the appointed date instead of commercial operation date. Other than these changes, the only changes made with respect to MCA would be with reference to square brackets and footnotes. Since there are no other changes PPPAC agreed that a further review of the concession agreement was not required.
- (xv) State Support Agreement: It was stated that the status of the State Support Agreement may be indicated in the bidding documents. Chairman, NHAI indicated that Ministry of law had made some suggestions in the Agreement which are acceptable to NHAI. It was agreed that the status of the Agreement would be indicated in the bidding documents.

3. Six Laning of Vadakkancherry to Thrissur: It was indicated that six- laning of Vadakkancherry to Thrissur Section in Kerala was not warranted given the present level of traffic of 25365 PCUs/day as indicated in the Memorandum of PPPAC. NHAI indicated that the traffic levels indicated in the proposal was for 2004 survey and the current levels is 32,000 PCUs which warrants six-laning in 2009 itself so six laning at this stage is being proposed.

#### **Appraisal by Planning Commission:**

4. Adviser to Deputy Chairman, Planning Commission indicated that the appraisal required to be undertaken by the Planning Commission as per the Cabinet approved guidelines could not be completed because the legal certification was received only three days back and that it was not possible to undertake clause by clause scrutiny of these complex and lengthy documents without such legal certification. He stated that he would soon send a note, which may be attached to the proceedings. Chairman, NHAI stated that clause-wise comparison of the Concession Agreement with the MCA was submitted with the proposal. However, based on the request of the Planning Commission, the same was furnished in a prescribed format and with legal certification. However, he reiterated that the PPPAC procedure makes it incumbent upon all the members of the Committee to provide their comments within four weeks of the receipt of the documents. Adviser to Deputy Chairman replied that the format suggested by Planning Commission for ease of appraisal helped in segregating the changes between those that are project-specific and permissible under the MCA and substantive deviations that require further review. He stressed that given the time bound nature of appraisal required under PPPAC guidelines such a process is essential. Chairman, NHAI suggested that in case any constituent of PPPAC needed any additional information in any particular format the same would be proposed to PPPAC for approval. This was agreed to.

5. It was decided to grant approval to the projects under consideration, subject to the above conditions.

6. The meeting ended with thanks to the Chair.

**Ministry of Finance  
Department of Economic Affairs**

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**Public Private Partnership Appraisal Committee (PPPAC)  
10<sup>th</sup> Meeting on March 11, 2007**

**List of Participants**

**I. Department of Economic Affairs**

- i. Dr D. Subbarao, Secretary, DEA (In Chair)
- ii. Smt. Sindhushree Khullar, Additional Secretary, DEA
- ii. Shri Arvind Mayaram, Joint Secretary, DEA
- iii. Ms Anna Roy, Director (PPP), DEA

**II. Planning Commission**

- i. Shri Gajendra Haldea, Adviser to Deputy Chairman, Planning Commission.
- ii. Shri K.R. Reddy, Deputy Secretary, Planning Commission
- iii. Shri Bhanu Mehrotra, Deputy Secretary, Planning Commission

**III. Department of Expenditure**

- i. Smt. Anuradha Balaram, Director, Department of Expenditure

**IV. Department of Legal Affairs**

- i. Shri A.P. Aggarwal, OSD, Department of Legal Affairs.

**V. Department of Road Transport & Highways**

- i. Shri Vijay Singh, Secretary, Department of Road Transport & Highways
- ii. Shri A.P. Bahadur, CE, Department of Road Transport & Highways

**VI. NHAI**

- i. Shri Pradeep Kumar, Chairman, NHAI.
- ii. Shri Nirmaljit Singh, Member (Technical), NHAI