

Ministry of Finance
Department of Economic Affairs

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Public Private Partnership Appraisal Committee (PPPAC)
13th Meeting on November 5, 2007

Record Note of Discussion

The 13th meeting of the Public Private Partnership Appraisal Committee (PPPAC) was held in North Block, New Delhi at 11.00 AM on November 5, 2007. The Finance Secretary chaired the meeting. The list of participants is annexed.

2. The PPPAC deliberated on the Agenda Note as circulated vide DEA's O.M. No.1/5/2005-PPP dated November 1, 2007.

3. It was decided to first examine some umbrella issues governing the PPPAC policy approach.

4. Toll Policy/Toll Rules:

4.1 It was noted that the proposals are based on the existing toll policy/rules since the new toll policy and the rules are yet to be approved and notified. Secretary, Department of Road Transport and Highways (DORTH) indicated that the notification of revised rules could take upto 3 more months. Chairman, PPPAC inquired whether the new toll rates were in the public domain and whether the process of Notification of toll rates can be delinked from the notification of the Rules. Secretary, DORTH clarified that the Rules were not in the public domain. Further, to delink the notification of rules and the toll rates, approval of CCEA would be required for delegating the authority for finalisation/notification of toll rates to DORTH. The representative of Planning Commission stated that the process of revision of toll policy/rules, which was initiated three years ago, had taken an unduly long time. He complimented the present Secretary, DORTH and Chairman, NHAI for expediting the process of finalisation of the revised Rules and indicated

that the rules are expected to be approved by Committee of Secretaries (COS). DORTH could consider fast tracking the Notification of the Toll Rules thereafter. He, therefore, suggested that the project proposals being considered by PPPAC should, therefore, be approved as per the new Toll Policy Rules.

4.2 The Chairman sought the views of the members of the PPPAC on considering the proposals as per the prevailing Toll Rules. The representative of Planning Commission was of the view that the proposed projects should adopt the new toll rules which have already been finalised and can be notified soon after obtaining approval of CCEA. The old rules have several inadequacies and gaps that would adversely affect projects and users for the entire concession period of 20 years. Moreover, the decision of CoI relating to revision of Toll Rules was taken way back on 13.1.2005 and it was high time the revised Rules were put in place. Pursuing the old rules almost three years after a CoI decision would seem highly irresponsible. The representative of DORTH was of the view that if decisions on the project proposals were deferred till the notification of the rules, the NHDP programme would slow down. Additional Secretary (EA) indicated that not considering pending projects until the notification of new rules was not desirable as it would be misconstrued as changing the rules to suit the proposals..

4.3 Considering all the views, it was decided that the project proposals under consideration may be considered in accordance with the prevailing Toll Rules and Toll Policy. The PPPAC urged DORTH to actively pursue the finalisation and notification of the revised Toll Rules by 31.12.2007.

(Action: DORTH)

5. **Model MCA for BOT (Annuity) projects:**

5.1 Joint Secretary (Infra.) indicated that a clarification had been sought from the Cabinet Secretariat regarding the competent authority for approval of Model Concession Agreements (MCA). The Cabinet Secretariat clarified that " as per the Government of India (Transaction of Business) Rules, 1961, the Model Concession

Agreement(s) would need to be approved by the Minister-in-charge of the concerned Ministry/Department, after obtaining concurrence of all such Ministries/ Departments, as are required to be consulted in terms of Rule 4 of the Government of India(Transaction of Business) Rules. In this context, it is further clarified that such concurrence should be obtained at the level of the Minister-in-charge of the consulted Departments and in case of disagreement between the departments, the matter can be placed before the Cabinet in accordance with the usual procedure". It was further indicated that DORTH have informed that the MCA for BOT (Annuity) projects was approved by the Task Force set up for the purpose and subsequently by Minister, DORTH. Therefore, in the light of the clarification from Cabinet Secretariat, a view was required to be taken whether the MCA for BOT (Annuity) projects being used by DORTH could be considered as approved by competent authority.

5.2 The Chairman requested DORTH to examine the clarification by Cabinet Secretariat on the subject and to confirm to the PPPAC whether the MCA for BOT (A) projects had the approval of competent authority specifically in terms of the clarification.

5.3 The representative of Planning Commission observed that in terms of the DORTH Office Order dated 29th January 1997, which was issued in pursuance of a Cabinet decision as well as the clarification issued by Cabinet Secretariat on 28th September 2007, there was no approved MCA for BOT (Annuity) projects. An IMG under Secretary (RTH) was already finalising an MCA for BOT (Annuity) projects. Planning Commission's view is that there is no MCA presently available for BOT (Annuity) projects.

5.4 The Chairman observed that the DORTH should take care not to give an admittedly mistaken impression that the approval of the revised MCA is being delayed so as to continue with the existing MCA. Secretary, DORTH clarified that the Department was according priority to finalisation of the new MCA (BOT

(Annuity) and the outstanding issues were being resolved expeditiously. The proposals currently under consideration of the PPPAC for BOT (Annuity) would be considered as per the existing MCA.

5.5 PPPAC urged DORTH to expedite the finalisation of the new MCA for Annuity projects. PPPAC further decided that since the New MCA for Annuity projects was expected to be ready by middle December, the BOT Annuity proposals being considered by PPPAC would be considered as per the existing MCA. The status of finalisation of the new MCA would be reviewed by the PPPAC in January, 2008.

(Action: DORTH)

6. Bidding Process: It was decided that all proposals would be bid according to the two-stage bidding process.

7. Other umbrella issues relating to PPPAC proposals in the Roads Sector : Secretary, DORTH indicated that the comments of Planning Commission regarding environmental clearance, land acquisition facilities to be provided by the concessionaire, and the legal comments were accepted fully by DORTH, excepting State Support Agreements (wherein DORTH was entering into Agreements on project basis), period of construction [the projects required a 3 years construction period] and Manual of Standards and Specifications. The representative of the Planning Commission requested that the legal certification and revised concession agreements may be sent to Planning Commission for their record. It was requested that the revised concession agreements along with certification may be provided so as to enable the Planning Commission to scrutinise the project documentation. It was noted that as per the decision of the 11th meeting of the PPPAC, the legal certification will be provided by DORTH after the approval of the projects by PPPAC.

(Action: DORTH)

8. Manual of Standards and Specifications: Secretary, DORTH indicated that the projects were based on the Manual of Standards and Specifications, which had been finalised in June, 2007. In accordance with the decision of PPPAC in the 11th Meeting, the Manual had also been put on the website of DORTH and circulated to all the constituents of the PPPAC. The representative of Planning Commission stated that the manual proposed to be adopted for the above projects has not been subjected to inter-ministerial consultations even though the decision on preparation of a Manual was taken over two years ago. It contains several provisions that would increase costs and invite claims during implementation. Secretary, DORTH stated that they were considering revisions of the Manual, but in the meanwhile, they were following the Manual approved in September 2007. The Chairman of PPPAC urged DORTH to examine the comments of Planning Commission and revise the Manual by the end of December.

(Action: DORTH)

Agenda No.I: Four laning of Jorabat-Barapani section under SARDP-NE on BOT (A) basis.

9. It was indicated that the proposal has been posed to PPPAC for grant of “in principle” and final approval for four-laning of Jorabat-Barapani section from km.000 to 61.800 of NH-40 in the state of Meghalaya under SARDP NE phase A on BOT Annuity basis. The project has been approved under SARDP- NE for construction of 4-lane road on BOT (Annuity) basis. The project had earlier invited bids on BOT (Toll) basis during June, 2004 and the last date of submission of bids was extended up to June 2006. However, no bids were received. CCEA in its meeting held on 23.11.2006 had approved the Change of Scope (4 lane standard) and Mode of Funding (BOT- Annuity). Representative of Planning Commission suggested that the agenda item may be deferred till the new MCA is finalised. AS (EA) noted that the CCEA had approved the proposal for being taken up with changed mode of funding (BOT-A) in November, 2006 and the Concession

Agreement for BOT (A) projects was available and suggested that the proposal may be considered. Noting that the outstanding issues in respect of the project proposal were being suitably addressed by DORTH, the PPPAC decided to grant final approval to the project proposal.

Agenda No.2: Six laning of Pimpalgaon-Nashik-Gonde Section of NH-3 under NHDP III.

10 It was indicated that based on the traffic survey six laning of the section was justified. Representative of Planning Commission suggested that DORTH could consider increasing the concession period to reduce the quantum of Viability Gap Funding. Secretary DORTH indicated that this would require changes in the project report and delay in the project. Representative of Planning Commission suggested that DORTH could consider constructing a 6 lane highway at grade instead of elevated highway at Nashik. Representative of DORTH explained that the cost of elevated corridor is Rs.188 crore as against Rs.77 crore for at grade structure. The alternative to elevated corridor is six laning of at grade road between Km.413.350 and km 418/450 and constructing individual 6-lane Flyovers at 4 Junctions of Aurangabad, Peth, Dwaraka and Mumbai Naka in addition to construction of new 3 lane Bridges at Godhavari River and Nasardi canal. By constructing Flyovers at almost at a distance of one or two kilometers apart, the road would look like a roller coaster and further it would encourage the local traffic to use individual flyovers. Hence an elevated highway was being proposed. Noting that the outstanding issues in respect of the project proposal were being suitably addressed by DORTH, the PPPAC decided to grant final approval to the project proposal.

Agenda No 3: Development of Eastern Peripheral Expressway on NH2 in States of Haryana and UP on BOT Toll basis.

11. It was indicated that the Eastern Peripheral Expressway (EPE) is proposed to be developed as a fully access controlled divided carriageway starting from km

36.083 on NH-1 and ending at km 64.330 on NH-2. It would serve as a complete Bypass Road for traffic presently passing through Delhi. The Expressway was proposed to be 6-lane divided carriageway. Representative of Planning Commission suggested that eight lane structures on the six-lane highway could be avoided to reduce the cost of the project. He stated that in most of the proposed projects, construction of six-lane structures on four lane highways amounted to over-engineering. Since there was no approved Manual, such a proposals were being made on an ad hoc basis. Planning Commission, therefore, objected to the said six lane structures. Representative of NHAI informed that the increased cost on account of eight lane structures was 3.5% of the total cost and the eight-lane structures would be required as the road reached peak traffic projections. It was also pointed out that the structures were as per the approved Manual of Standards and Specifications. Noting that the outstanding issues in respect of the project proposal were being suitably addressed by DORTH, the PPPAC decided to grant final approval to the project proposal.

Agenda No 4 and 5: Two projects under NHDP III A in Orissa State

- **Four Laning of Panikoili-Rimuli Section of NH 215 from Km 0 to Km 62 in the State of Orissa under NHDP Phase IIIA on BOT Basis-Package I & Four Laning of Panikoili-Rimuli Section of NH 215 from Km 62 to Km 163 in the State of Orissa under NHDP Phase IIIA on BOT Basis-Package II.**
- **Four Laning of Rimuli Roxy Rajamunda Section of NH 215 from Km 163 to Km 269 in the State of Orissa under NHDP Phase IIIA on BOT Basis.**

12.1. It was noted that the Panikoili-Rimuli Section of NH 215 from Km 0 to Km 62 under NHDP III A consisted of sub projects (of 60.5 km and 105.63 kms respectively) and the contiguous project Rimuli Roxy Rajamunda Section of NH 215 from Km 163 to Km 269 was of 106 km. The total project costs of the three packages was Rs 369 crore, Rs 717 crore and Rs 654 crore respectively.

12.2. It was decided that the package one and two for four laning of Panikoili-Rimuli Section of NH 215 from Km 0 to Km 62 and Km 62 to Km 163 respectively may be clubbed and bid out on BOT basis.

12.3 . Four laning of Rimuli Roxy Rajamunda Section of NH 215 from Km 163 to Km 269 may be bid out on BOT basis as proposed by NHAI.

(Action: DORTH)

Agenda No 6: Four laning of Talchar-Dubari-Chandikhole section of NH 200 from Km 301.890 to km 428.030 in the State of Orissa under NHDP Phase III A on BOT basis

13 It was indicated that the issues in respect of the project proposal raised by Planning Commission were being suitably addressed by DORTH. Additional Secretary, Expenditure noted that the per-kilometer cost of the project (*Rs 5.88 crore per k.m.*) was closest to the norm (*Rs 5.89 crore per km*) envisaged for NHDP projects. The PPPAC decided to grant final approval to the project proposal.

Agenda No 7, 8 and 9: Three projects under NHDP III A in Andhra Pradesh

- i. Design Construction, Finance, Operation and maintenance of Hyderabad – Vijayawada section Construction of additional 2 laning/future 6 laning of NH 9 in the State of Andhra Pradesh (km 40 to km 160)**
- ii. Design Construction, Finance, Operation and maintenance of Hyderabad-Vijayawada section including Design, Engineering Finance, Construction of additional 2 laning/future 6 laning of NH 9 in the State of Andhra Pradesh (km 160 to km 221.5)**
- iii. 4 laning of Hyderabad Vijaywada-Machilipatnam section of NH 9 from Km 0 to 63 in the State of Andhra Pradesh under NHDP Phase IIIA on BOT Basis**

14.1 It was decided that the package of Hyderabad-Vijayawada section of NH 9 from Km 40 to Km 160 and package of Hyderabad-Vijayawada section of NH 9 from Km 160 to Km 221.5 may be clubbed and bid out on BOT basis.

14.2. The package of four laning of Hyderabad-Vijayawada-Machilipatnam section of NH 9 from Km 0 to Km 63 may be bid out on BOT basis as proposed by NHAI.

(Action: DORTH)

Agenda No 10: Design Engineering, Construction, Development, Finance and Operation and maintenance of MP/Maharashtra Border Dhule section of NH 3.

15 It was indicated that the issues in respect of the project proposal raised by Planning Commission were being suitably addressed by DORTH. However, there is an existing BOT (Toll) concession in operation for construction of ROB at Naradan at Km. 228/800 including improvement to the road from km. 219/7000 to km. 233/000 (length 13.3 km), which will expire on 4th October 2013. It was advisable that the existing concession agreement is legally examined before bidding the proposed project. The project proposal was approved subject to Chairman NHAI satisfying himself that there are no outstanding legal issues on account of the existing BOT (Toll) concession in operation and that public interest is not compromised.

Agenda No 11: Design Engineering, Finance, construction, Operation and Maintenance of Four Laning of NH-12 from Bareli to Jabalpur Section in the State of Madhya Pradesh under NHDP Phase-IIIA on Build, Operate and Transfer Basis

16 It was indicated that the proposal had been posed for in-principle approval since the project was not viable with 40% VGF, 30 year concession agreement and had low traffic density. It was noted that though the Model Concession Agreement for BOT (Toll) projects is there, the draft Concession Agreement and other documents in respect of the proposal had not been prepared on the ground that it

was for 'in-principle approval of PPPAC. It was suggested that the proposal could be prepared as a two-lane highway. It was decided to return the project to DORTH since it was not mature for consideration by the PPPAC.

Agenda No 12: Design, Engineering, Construction, Finance and Maintenance of Jaipur Reengus section of NH 11.

17 It was indicated that the issues in respect of the project raised by Planning Commission were being suitably addressed by DORTH. The PPPAC decided to grant final approval to the project proposal.

Agenda No 13: Other items with permission of the chair

18 Secretary DORTH requested the Chairman for permission to discuss issues pertaining to the Jaipur- Bhadarpur Highway. It was informed that all approvals for the project had been taken and requested that the construction period for project may be reduced from 30 months to 24 months; the period for reaching financial closure may be reduced from 6 months to 3 months, the performance security may be increased to 10 % from 5% and the concessionaire may be allowed to commence construction without awaiting financial closure of the project. Representative of Planning Commission suggested that the construction period may be reduced as sought, however, the period of reaching financial closure should not be halved to three months; DORTH could consider reducing the period to five months. He suggested that the performance security should remain 5% and commencement of construction before financial closure may be avoided. This was agreed to.

19 Secretary DORTH drew attention to the 10th meeting of the PPPAC wherein it was decided that for the seven projects approved by the PPPAC in that meeting, the bidding documents with the old Toll policy with new figures (revised toll rates) in

place. He stated that DORTH had obtained the approval of CCCEA accordingly and invited bids for the projects. Since the Toll rules/ rates had not been notified, DORTH would have to postpone the opening of the bids which was due for mid- November and delay the NHDP programme. He sought approval of the PPPAC to allow NHAI to bid the projects according to the old toll policy and with old toll rates. Representative of Planning Commission suggested that the proposed change would also require that the approval of CCEA to the projects would have to be obtained again. This was agreed to. The PPPAC approved re-bidding for the seven projects approved by the PPPAC in 10th meeting, as per existing Toll policy with existing toll rates, subject to DORTH obtaining approval of CCEA to the revised proposal.

(Action: DORTH)

20. The Chairman, thereafter, summarised the generic decisions taken during the meeting as under :

- i. DORTH would confirm to the PPPAC within a week whether the MCA for Annuity projects had the approval of competent authority as per the clarification by Cabinet Secretariat on the subject .
- ii. DORTH would pursue all efforts to get the new Toll Rules and the new Model Concession Agreement for Annuity proposals approved by December 2007. The progress in this regard would be reviewed by PPPAC in January 2008.
- iii. No proposal for BOT (Annuity) would be considered by the PPPAC after December 2007 till the new MCA for Annuity projects finalised.
- iv. DORTH may share the Manual of Standards and Specifications with Planning Commission, examine their comments and to the extent there are requirements, modify and finalise the Manual.
- v. DORTH may consider having a preparatory meeting with Planning Commission before the proposals are sent to PPPAC for approval so that the views and differences are clearly communicated.

(Action: DORTH, Planning Commission)

21 The meeting ended with a vote of thanks to the chair.

**Ministry of Finance
Department of Economic Affairs**

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**Public Private Partnership Appraisal Committee (PPPAC)
13th Meeting on November 5, 2007**

List of Participants

I. Department of Economic Affairs

- i. Dr D. Subbarao, Finance Secretary (In Chair)
- ii. Smt Sindhushree Khullar, Additional Secretary
- iii. Shri Arvind Mayaram, Joint Secretary
- iv. Mrs. Aparna Bhatia, Joint Director
- v. Ms. Prathibha, A., Assistant Director

II. Department of Expenditure

- vi. Smt Rita Menon, Additional Secretary

III. Planning Commission

- vii. Shri Gajendra Haldea, Adviser to Deputy Chairman^.
- viii. Shri Ravi Mittal, Adviser (Infra.)
- ix. Shri K. Ranga Reddy, Deputy Adviser
- x. Shri A. Manohar, Deputy Adviser

IV. Department of Road Transport and Highways

- xi. Shri Brahm Dutt, Secretary
- xii. Shri G. Sharan, ADG
- xiii. Shri A.P. Bahadur, CE (PIC)

V. National Highways Authority of India

- xiv. Shri N. Gokulram, Chairman
- xv. Shri Nirmal Jit Singh, Member (Tech.)
- xvi. Shri K.S. Money, Member
- xvii. Shri A.V. Sinha, Member
- xviii. Shri C. Kandasamy, Member (T)
- xix. Shri A.K. Bajaj, CGM
- xx. Shri S.K. Nirmal, GM (BOT)
- xxi. Shri S.K. Puri, CGM.