

Ministry of Finance
Department of Economic Affairs

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Public Private Partnership Appraisal Committee (PPPAC)
18th Meeting on October 23, 2008

Record Note of Discussion

The 18th meeting of the Public Private Partnership Appraisal Committee, chaired by Secretary, Economic Affairs was held on October 23, 2008. The list of participants is annexed.

2. At the outset, the Chairman welcomed the participants and observed that the PPPAC would consider 2 proposals from Department of Shipping (DoS) and 9 proposals from Department of Road Transport and Highways (DoRTH). It was decided to first consider the proposals from Department of Shipping.

Agenda Items 10 & 11: Proposals from Department of Shipping (DoS).

- i. Development of Deep Draught Coal Berth on BOT basis at Paradip Port.**
- ii. Development of Deep Draught Iron Ore Berth on BOT basis at Paradip Port.**

3. The Chairman, Paradip Port Trust made a presentation on the projects. The PPPAC noted that the two proposals, viz., development of deep draught iron ore and coal berth on BOT basis in Paradip Port had been considered by PPPAC in its meeting held in March 2007 and granted 'in principle' approval.

4. The estimated project costs for development of the iron ore berth and coal berth was Rs. 591.35 crore and 479.01 crore respectively. The proposed scope of work of the Concessionaires of the two proposed adjacent berths at the Paradip Port, included undertaking capital dredging in front of the berths to a depth of 17.1 metres and construction of railway track from Railways exchange yards to wagon tippers. Since the railway line would be utilised for bringing iron ore till the wagon tippers for the iron ore berth and carrying coal from the coal berth till the railway line, a common contractor, jointly paid by the Concessionaires of the two berths, was proposed. It was emphasised that the proposed railway line was vital for reducing the turn-about time at the berths. Drawing attention to the observation of Planning Commission in their Appraisal Notes for the projects, representative of DoS stated that the observations primarily related to clauses of the Model Concession Agreement (MCA), which had been approved by the Cabinet. In addition, Clause

6.4 (h) of the MCA had been deleted in the two Project DCAs since it was not proposed to allow the concessionaires to interrupt and divert/create barriers on flow of water, or on the road or port traffic, since it would affect port operations to the other existing berths.

5. Representative of Planning Commission stated that the observations of Planning Commission on the proposals were on two counts; first, with regard to deviations proposed by DoS in the project Draft Concession Agreement (DCA) from the port sector Model Concession Agreement (MCA); and secondly, observations on certain clauses of the DCA (based on corresponding provisions of the MCA) which had been highlighted by the legal consultants of Planning Commission.

6. Representative of Planning Commission emphasised that the extension of the scope of work of the concessionaire to include capital dredging and construction of railway line were major departures from the MCA. Furthermore, the proposed implementation structure, wherein both the Concessionaires had joint responsibility of undertaking capital dredging and constructing the railway line through a common contractor, was open ended and could result in dispute. The proposed arrangement requiring the Concessionaire to undertake capital dredging and the port authorities to undertake maintenance dredging required a review. It was stated that TAMP had determined the tariff for Paradip Port based on initial project cost, during March 2008, and escalation in project cost subsequently by DOS was not a good practice. DoS were requested to clarify whether the cost of capital dredging had been considered by TAMP while determining the tariffs for Paradip port. Further, change in clause 64 (h) of the DCA allowing diversion to the waterway approach was not warranted since the objective of the original provision was to expedite construction of berths.

7. Representative of Planning Commission indicated that the clauses in the project DCAs and their formulations, though based on the MCA, could result in disputes or higher payments from the exchequer. It was suggested that the alternative formulations suggested by Planning Commission could be remitted to a smaller group by the PPPAC for examination. Based on the deliberations, the PPPAC could recommend improvements to the Cabinet, while recommending the proposals for approval.

8. Representative of Department of Expenditure (DoE) requested DoS to indicate requirements of GBS, if any, for the projects, and noted that the design of the project requiring capital dredging to be undertaken by the concessionaire and maintenance dredging by the Port authorities required a review. Noting that the civil

cost of the projects included the cost of capital dredging, it was suggested that the cost of dredging should be separately indicated for examination. Drawing attention to the Vallarpadam port, Cochin which had previously required budgetary support for similar activities, DoS was requested to clarify whether GBS would be required for undertaking maintenance dredging by the Port authorities.

9. Secretary, Department of Shipping explained that GBS would not be required for Paradip port projects. The cost of capital dredging was Rs 50 crore in respect of iron ore berth and Rs 35 crore in respect of the coal berth. It was proposed to include capital dredging, since the experience of the Department has been that the Port Authorities were unable to award dredging contracts due to shortage of dredging contractors/facilities in the country. Therefore, the works are awarded to the *Dredging Corporation of India* resulting in delays due to capacity constraints and its already stretched resources. The enhancement in the scope of work to include capital dredging and construction of railway line would be incorporated by the bidders while bidding for the projects. Further, the capital cost as per TAMP's order dated March, 2008 for iron ore berth was Rs 544 crore (as against estimation of Rs 591 crore by DoS in the instant proposal) and capital cost for coal berth taken into account for the said order by TAMP was Rs 461 crore (as against an estimation of Rs 479 crore by DoS in the instant proposal). It was explained that the difference in the project costs as per TAMP and as estimated by DoS varied because tariffs determined by TAMP are not project specific but cargo specific.

10. Representative of DEA observed that the MCA for Port sector had been deliberated upon extensively by an Inter Ministerial Group and finalized with the approval of the Cabinet. Therefore, unless there were overwhelming reasons, changes in the formulation of the clauses should not be effected. The observations from Planning Commission suggesting changes in the clauses of the project DCAs, which were in accordance with the Cabinet approved MCA, had been carefully examined by the Department. DEA was of the view that the MCA addressed the issues of contingent liabilities, secured public interests and ensured that risks were allocated evenly. Hence, changes in the project DCA, vis-à-vis the corresponding MCA provisions, were not warranted. However deviations to the MCA such as enhancement of the scope of work of the Concessionaires of the two berths, to include undertaking capital dredging and construction of railway line through a common contractor, were also not recommended for approval. The concessionaires of the coal berth and the iron ore berth were expected to mutually agree on the contractor for dredging the berth face. Similarly, the concessionaires of the two berths were expected to mutually agree on the contractor to be appointed for constructing the railway line. Delay/ inability of the Port Authorities to engage the concessionaires of the two berths simultaneously, or the possibility of the

concessionaires not arriving at mutually acceptable contractors for undertaking the works would effect the enforcement of the Agreements and execution of works at the two berths. Therefore, construction of railway line and capital dredging should remain the responsibility of the Port Authorities. It was emphasized that Clause 64 (h) of the MCA should be retained in the project DCAs since it came into operation only under circumstances requiring diversion of water way approach/ traffic, with the prior approval of the Concessions Authority. Representative of Department of Expenditure concurred with these observations.

11. It was decided that clause 64(h) of the MCA would be retained in the project DCAs. The construction of the railway line and capital dredging would be the responsibility of the concessions authority. The PPPAC granted final approval to the projects subject to the above conditions.

(Action: DOS)

Agenda Items 1 to 9: Proposals from Department of Road Transport and Highways for Six laning of National Highways under NHDP V.

12. The PPPAC noted that DORTH had posed nine projects for six laning of four laned National Highways proposed to be executed under NHDP Phase V. The Highways are currently being tolled and the proceeds thereof accrue to the NHAI. Representative of DEA informed that there were certain issues generic to the project proposals which could be considered in the first instance by the PPPAC.

- i. **Commercial Operations Date:** The COD has been defined in the project DCAs as, *an event occurring on the date on which all Conditions precedent have been satisfied or waived*. On COD, the toll revenues would cease to accrue to NHAI, and would flow to the concessionaire through the provisional escrow account. In contrast, the COD in the base MCA, whereupon the Concessionaire shall be entitled to demand and collect fee, is deemed to be the date when the Completion Certificate/ Provisional Certificate is issued for the project. In the proposed DCAs, the collection of toll is not linked to the Concessionaires' execution of the projects. The revised definition proposed in the DCAs results in the concessionaires getting gross cash accruals/ toll revenues during the construction period, which far exceed the performance security for the projects. Furthermore, the incentive to complete the six laning within the stipulated time is adversely impacted. The need for changing the base MCA to include advancing the COD to the date when Conditions Precedent have been satisfied, may not be necessary, as the Concessionaire can factor in the O&M costs of the existing

highway in his bid. In sum, the tolling rights may be retained with the Concessioning authority till the project completion date.

- ii. **Estimated Project Cost:** The unit cost of the projects (cost per km) ranges between Rs. 9 crore to Rs 14 crore which is higher than the estimated per unit cost indicated by DoRTH in the revised financing plan for 6 lane highways constituting the Golden Quadrilateral. It was, therefore necessary for DoRTH to review and confirm that the envisaged construction of extensive stretches of service lanes on both sides of the road and numerous other structures were essential for the projects. Planning Commission in its Appraisal Notes have suggested that the cost of the projects could be rationalised by constructing service lane only when traffic reaches a level of 60,000 PCU and also recommended changes in the Manual of Standards and Specifications (MSS) that are oriented towards reducing the cost of the projects.
- iii. **Design Capacity of the project Highway:** DORTH has indicated a design capacity of the six lane highway as 90,000 PCUs. In contrast, Planning Commission in its Appraisal Notes, had suggested that the design capacity of the project should be fixed at 1,20,000 PCUs and suggested longer concession periods for the projects. It was pointed out that PPPAC, in its 16th meeting held on August 4, 2008, had advised DoRTH to develop standards for capacity augmentation for six-laning, and design capacity of six lane highways in consultation with IRC. It was indicated that in the interim, till the standards for six laning are thus developed, the view of DEA was to accept 90,000 PCUs as the design capacity to ensure Level of Service -B (LoS B) for the project highways.
- iv. **Performance security:** It was pointed out that the estimated gross amount of toll collected during the construction period would exceed the performance security in all the projects and needed to be enhanced. In addition, the performance security would remain in force for a period of two years only, after which it will lapse. It was suggested that the DCA should allow the concessioning authority to seek extension of the validity period of the performance security in case project expenses do not exceed 40%.
- v. **Right of Way:** It was indicated that the quantum of additional land required for six laning has not been specified for the projects by NHAI. Since non availability of land could be a serious risk factor for the projects, it was suggested that the RfP for the projects be issued only after RoW was available for at least 50% of the additional land required for six laning.
- vi. **Equity Contribution:** To ensure that the toll revenues and VGF do not crowd out equity contribution by the concessionaire, it was suggested that a

minimum contribution of the concessionaire, equal to 20% of the Total Project Cost (TPC), may be stipulated for the projects.

- vii. It was pointed out that certain other comments on the DCAs of the project highways had also been highlighted by DEA and Planning Commission in their Appraisal which required to be addressed.

13. Representative of Expenditure concurred with the observations of DEA and requested DoRTH to indicate the status of the Financing Plan. It was suggested that the macro financing position and the financing plan for the proposed projects should be reviewed in every meeting of the PPPAC.

14. Representative of Planning Commission pointed out that the project DCAs were based on the proposed MCA for six lane highways, which had been approved by Empowered Sub-Committee of Committee on Infrastructure (ESCoI) and which had been circulated by DORTH to the Ministries concerned for comments. It was pointed out that changes in the MCA for four-lane highway were necessary since the four lane highways required the toll to be collected after completion of four laning. In contrast, the stretches proposed for six laning were already being tolled. There were provisions in the proposed MCA for six laning which ensured that the allocation of risks was optimal and there were adequate safeguards for ensuring the security of toll revenues being collected by the Concessionaire. Hence, comments of Planning Commission related to the deviations from the proposed MCA for six-lane highways and the high cost of the projects which could be addressed through a review of the existing Manual of Standards and Specifications (MSS). It was clarified that the view of Planning Commission was that six lane highways with paved shoulders could allow more than 120,000 PCUs per day at LOS B. Hence, the design capacity for six lane highways should be taken as 120,000 PCUs per day for estimating the concession period. It was stated that fixing the concession period based on a design capacity of 90,000 PCUs per day would result in shorter concessions, possibly earlier terminations and re-bidding though the highways had greater carrying capacity, which could be avoided.

15. Representative of Department of Legal Affairs stated that the proposed MCA for six lane highways had been cleared by the Department and that there were no specific legal issues in respect of the nine project proposals.

16. Secretary, Road Transport and Highways informed that ROW of more than 50 percent additional land required for six laning of the project highways was available with NHAI. The provision of service lanes and structures had been proposed in

accordance with the approved Manual of Six laning of Highways and as per the security considerations. It was stated that the length of the service lanes would be reviewed and reduced wherever possible as per site requirement. It was clarified that DORTH had deliberated at length on the MSS with the Planning Commission and addressed their reservations on the document. Acknowledging that possibility of further improvements could be explored, it was emphasised that MSS was a technical matter and the final view on the matter rested in the domain of the Administrative Ministry. Secretary, RTH further clarified that the proposals were part of the financing plan. Further, the existing toll rules would continue to apply to the projects where the RfP was issued before the Notification of the revised Toll Rules.

17. Secretary DORTH stated that the project DCAs had been prepared as per the MCA for six laning received from Planning Commission after inter ministerial consultations. However, in view of the concerns of DEA, the following provisions could be incorporated in DCAs in accordance with the earlier decision of PPPAC in its meeting held on May 11, 2007 for the approval of five Six Laning projects under NHDP Phase V:

- i. Financial Closure is made a condition precedent for Appointed Date.
- ii. Apart from 5% Performance Security, An additional performance security (known as Fee Collection Performance Security) equivalent to 3 months' expected Toll Revenue is collected to secure the Concessionaire's obligation for the completion of the project.
- iii. The collection of Toll revenues shall be maintained in a separate sub Account viz., "Construction Period Fee Escrow Sub Account" and release of same to the Concessionaire is linked to the achievement of milestone during the construction and completion of the project. In case the Concessionaire does not complete the project by Scheduled Six Laning Date, the revenue collected between Actual and Scheduled Completion Dates shall accrue to NHAI.

18. Representative of Planning Commission noted that the concerns of DEA could be addressed by reviewing the performance security for the projects. It was pointed out that the performance security and toll collected during the construction period should be viewed from the perspective of the projects being viable and likely to secure a revenue share during the bidding process. It was pointed out that a similar structure had also been adopted for Delhi and Mumbai Airports earlier. The Chairman pointed out that the proposals under consideration were different than the Airport projects where a significant component of the revenues collected were required for O&M and salaries of the employees. In the instant projects O&M constituted a small (1 to 3 percent) of the total project cost.

19. It was noted that Department of Economic Affairs was examining the proposed MCA for six lane highways wherein the Department was expected to convey its views with the approval of the Finance Minister. Noting that the view of the PPPAC for the nine six lane projects should not pre-empt or be contrary to the final view of DEA on the MCA, it was decided to defer the agenda items. It was decided that the meeting of the PPPAC would be reconvened in a fortnight after observations of the Department on the MCA for six lane highways are conveyed to DORTH.

(Action: DEA)

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

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18th Meeting on October 23, 2008**

List of Participants

- I. Department of Economic Affairs**
- i. Shri Ashok Chawla, Secretary (Economic Affairs) (In Chair)
 - ii. Smt. Sindhushree Khullar, Special Secretary
 - iii. Shri Govind Mohan, Director
 - iv. Smt. Aparna Bhatia, Joint Director
 - v. Ms. Pratibha A, Deputy Director
- II. Department of Expenditure**
- vi. Smt. Rita Menon, Special Secretary (Expenditure)
- III. Planning Commission**
- vii. Shri Gajendra Haldea, Adviser to Dy. Chairman
 - viii. Shri K.R. Reddy, Joint Adviser
 - ix. Shri S.K. Saha, Director
 - x. Shri H.P. Kannaujia, Dy. Adviser
- IV. Ministry of Law**
- xi. Shri P.K. Malhotra, Joint Secretary
- V. Department of Road Transport & Highways**
- xii. Shri Brahm Dutt, Secretary
- VI. Department of NHAI**
- xiii. Shri Brijeshwar Singh, Chairman
 - xiv. Shri S.K. Puri, Member(Tech.)
 - xv. Shri S.K. Gupta, GM (MC)-II.
 - xvi. Shri M.P.S. Rana, GM (T).
 - xvii. Shri L.P. Padhy, GM(T)
 - xviii. Shri U.C. Katara, DGM(T)