

Ministry of Finance
Department of Economic Affairs

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Public Private Partnership Appraisal Committee (PPPAC)
29th Meeting on November 11, 2009

Record Note of Discussion

The 29th meeting of the Public Private Partnership Appraisal Committee, chaired by Finance Secretary was held on November 11, 2009. The list of participants is annexed.

2. The Chairman welcomed the participants and noted that three projects proposed by Department of Shipping (DoS) would be considered during the meeting. He noted that there were certain generic issues which were common to the three proposals. It was decided that these common issues could be first discussed; thereafter the Port authorities concerned would make short presentations on the proposals and comments of members of PPPAC would be invited thereupon.

3. Joint Secretary, DEA presented the generic issues in respect of the projects:

3.1 **TAMP Notifications:** It was noted that the project Draft Concession Agreements (DCAs) were incomplete and the TAMP notification in respect of the projects had not been attached with the DCAs or provided to the PPPAC members. The TAMP notification is critical for indepth study of the project structure and its financials while appraising the projects, and in the absence of the TAMP notification, the revenue streams of the projects remain indeterminate and the project appraisal incomplete. The representative of DoS explained that the instant projects had been forwarded to PPPAC on the directions of the Cabinet Secretariat and the urgency on account of accelerating the bidding of the projects, which had got delayed due to various reasons. It was further clarified that the TAMP notification and rates in respect of the two Jawaharlal Nehru Port Trust (JNPT) projects were available with DoS; however, the TAMP notification in respect of Vishakhapatnam Port Trust (VPT) was still to be issued. It was indicated that the formal hearing for setting the tariff rates had been completed by TAMP and the final notification, broadly aligned with the rates proposed by VPT, was expected to be notified soon. It was decided that the PPPAC would consider the projects based on the available documents as a *one time exemption* and that the TAMP rates notified/as applicable for each of the individual terminals/projects under

consideration would be forwarded by DoS to the members of PPPAC and also annexed to the project documents.

(Action: DoS)

- 3.2 **Observations of Planning Commission on the project DCAs:** Joint Secretary, DEA informed that Planning Commission had raised a number of issues in respect of the project DCAs. While some of these related to departures from the MCA, a large number of observations were comments on the MCA for port sector, which has been approved by the Cabinet. It was noted that the PPPAC would only consider comments on such of the DCA clauses which were departures from the MCA. The observations in respect of the MCA could be separately sent to DoS for consideration by the Inter Ministerial Group (IMG), chaired by Secretary (Shipping) to consider issues in respect of the MCA for port sector.

Agenda Item 1: Mechanised Coal Handling facilities and upgradation of General Cargo Berth at Outer Harbour of Visakhapatnam Port to cater 200,000 DWT vessels on DBFOT basis

4. Chairman, Visakapatnam Port Trust (VPT) made a presentation on the project. The PPPAC noted that the Port handled 28 percent of the coking coal dealt by all major ports and served the requirements of steel plants in the vicinity such as Bhilai, SAIL and RINL and other importers. Currently, the coal was manually handled, which resulted in spillage and environmental concerns. The instant project was required to cater to the increasing demand for imports for coal, provide integrated mechanised facility, cater to 2,00,00 DWT vessels as against the current capacity of 1,00,000 DWT vessels, provide an environmentally friendly solution and enhance the productivity levels at the port. It was explained that the cost of the project had been revised to Rs 461.57 crore due to extension of the berth to 21 meters (as against earlier proposed 18 meters) and on account of estimating the miscellaneous cost as 8 percent of the total capital cost (as against earlier estimation of 5 percent). It was clarified that the miscellaneous cost was thus able to take into account the Interest During Construction (IDC) and escalation, to arrive at an accurate level of estimated project cost.

5. Chairman, VPT informed that the process of selection of private operator for the proposed berth had commenced in September 2008 through issue of RfQ. Six applicants were shortlisted in May 2009; security clearance sought and RfP issued to the shortlisted bidders. Joint Secretary, DEA pointed out that issue of RfP for a PPP project without seeking/obtaining clearance of the PPPAC contravened the Cabinet

approved Guidelines for Formulation, Appraisal and Approval of PPP projects. He questioned the objective of seeking due-diligence and appraisal from members of PPPAC by the Port authorities, if the RfP document had already been issued to the shortlisted bidders. Secretary, Shipping clarified that the breach of process may be taken as **one time exception** on account of the need to accelerate the process of selection of the Concessionaire. It was confirmed that the observations and decisions of the PPPAC in respect of the project would be effected through issue of addendum to the project documents; and that henceforth, clearance of PPPAC would be sought before the issue of RfP to the shortlisted bidders for port sector PPP projects.

(Action: DoS)

6. Secretary, Planning Commission indicated that there were deviations in the project DCA from the MCA regarding equity share holding of Lead Member as 26 percent as against 50 percent prescribed under the MCA. It was clarified that the equity share holding had been restored to 50 percent in the project DCA.

7. Chairman, VPT informed that based on the observations of representative of DEA on the DCA of another project of VPT, the project documents had been revised to align it with the MCA. Certain deviations from MCA which still remained were presented to the PPPAC, viz., collection of upfront fee of Rs. 33.32 crore to recover the residual value of the existing berth as it is a fully operational berth having a balance life of 25 years, capital dredging at the berth and maintenance dredging up to 60 meters from the face line of the berth to be undertaken by the Concessionaire, while maintenance dredging beyond 60m from the face line of the berth will be by the Concessioning Authority, inclusion of land lease rentals in place of license fee etc. The proposed deviations were agreed to, except inclusion of lease rentals and licence fee. DoS was requested to obtain an independent legal opinion on whether licence fee and lease rentals are admissible in a concession (BoT) project.

8. The PPPAC granted final approval to the project subject to conditions in para 7 above and subject to the tariff rates, notified by TAMP, in respect of the proposed berth, being forwarded by DoS to the members of PPPAC and annexed to the project documents before the bid due date.

(Action: DoS)

Agenda Item 2: Development of 4th Container Terminal at Jawaharlal Nehru Port Trust (JNPT)

9. Chairman, JNPT made a presentation on the project proposal. It was noted that the existing container handling capacity of JNPT is 4.20 million TEUs. During 2008-09, JNPT handled 3.95 million TEUs, reaching almost saturation levels in terms

of capacity of handling container traffic. Further, with the recovery of the economy, the traffic at JNPT is expected to start growing, thus leading to a capacity shortage in the coming years. Accordingly, JNPT proposed to develop the 330 m terminal and the 4th container terminal on DBFOT basis. The fourth container terminal is proposed to be built in two phases under a single concession. The capacity of the terminal is estimated to be 2.40 million TEUs per annum in each of the two phases, adding up to a total capacity augmentation of 4.80 million TEUs per annum.

10. Chairman, JNPT informed that the project had received environmental clearance and that the upfront tariff for the berth had been approved by TAMP. The RfQ for the project has been invited. The cost of the project was Rs 6696.6 crore.

11. Joint Secretary, DEA stated that certain components had been added as operator's obligations for the project such as shifting and construction of the matching BPCL facility, construction of passenger jetty and reclamation of 135 Ha land for onshore facilities, which were likely to make the project unattractive to the investors. Since the Concessionaire would have to compete with the other berths for traffic, the berth would have to maintain the tariffs at the levels offered by the other berths. Hence, it would be advisable to not include these components in the scope of work of the Concessionaire. In case JNPT was not in a position to undertake the works in a time bound manner, it could consider adopting the model wherein the works are carried out by the Concessionaire, but the cost thereof re-reimbursed by JNPT on actuals. By adopting such an approach the Port Trust would harness the private sector efficiencies in undertaking the assignment, and yet not load the cost on the private operator.

12. Secretary, Shipping explained that JNPT would not be able to undertake the works itself; further, payment on actual for the work done to the Concessionaire may not lend high degree of transparency to the process of price discovery for undertaking the works. Hence, the balance of convenience favored the allocation of components, critical to the successful execution of the proposed project, as part of the Concessionaire's scope of work.

13. Chairman, JNPT stated that the project remained viable even with inclusion of these components, with an estimated equity IRR of 21.64 percent. If the private operator undertakes these components, it is likely to facilitate smooth execution of the Project through a single executing agency. The Concessionaire would have full control over the execution of the Project without depending on JNPT for any aspect of the project. Further, all the costs had been taken into account for setting the tariffs for the project. The scope of work was not likely to skew the tariff rates offered by the different operators on the Port, its inclusion was likely to be absorbed by the bid response, i.e., lesser revenue share offered by the bidders to the Port Trust, leaving

the tariff rates broadly competitive. It was agreed that the proposed scope of work may be accepted.

14. Chairman, JNPT presented the project specific deviations proposed in the project documents. It was confirmed that the Minimum Guaranteed Cargo had been incorporated and the modification in the definition of Debt Due had been undertaken. The proposed deviations were agreed to, excepting proposal for incorporation of annual lease charges for the water area to be handed over for creation of berth and reclamation to the Concessionaire. DoS was requested to obtain independent legal opinion on the admissibility of charging lease rentals in a BoT concession.

15. The PPPAC granted final approval to the project subject to conditions in para 14 above. DoS was requested to forward the revised project documents to the members of PPPAC for record.

(Action: DoS)

Agenda Item 3: Development of Standalone container handling facility with a quay length of 300 m towards North at Jawaharlal Nehru Port Trust (JNPT)

16. Chairman, JNPT presented the proposal. It was indicated that both the projects, viz. the instant project and the fourth terminal were required to meet the projected capacity requirements by 2016. Joint Secretary, DEA pointed out that location of the project provided an unfair advantage to the operator of the adjacent berth with respect to bidding for the project. Further, the fourth terminal was adequate to meet the projected traffic levels in the near future. Hence, development of the instant project was not immediately justified. Further, the capacity augmentation through development of the proposed berth would be inadequate to meet the projected traffic levels by 2016. Therefore, JNPT needed to explore other avenues for capacity augmentation, once capacity created through the 4th terminal reached saturation levels. It was noted that the consultants engaged for the project had suggest a number of alternatives for augmenting the capacity at JNPT and the instant proposal was one of them, *albeit* the one likely to generate maximum revenues for the Port. It was also pointed out that the process of short-listing two bidders required further elaboration.

17. Representative of DEA stated that the guidelines for awarding projects on PPP basis for expanding capacities at major ports stipulated that the successful bidder of a project at a particular port would be barred from bidding for the subsequent project at the same port. While the guidelines aimed to prevent domination of a single private operator at a port, in respect of the instant project they were likely to adversely effect private sector interest in bidding for the project since

the bidder selected for the instant project would become ineligible to bid for the larger project of development of the fourth terminal at JNPT. To counter the dual constraints, viz. locational advantage of the existing terminal operator on the instant project and the provisions of the port policy on bidding for projects, it would be advisable that the bids for the fourth terminal are invited and awarded *before* the completion of bidding for the instant berth.

18. Chairman, JNPT explained that the RfQ issued earlier and the short-list prepared had been discharged and fresh bids invited. It was reiterated that JNPT would require capacity augmentation in addition to the capacity created by development of the fourth terminal by 2016. It was clarified that though the proposed berth would be inadequate to meet the projected traffic capacity requirements, the port was constrained by lack of space and not in a position to immediately propose a larger project. Hence, it was necessary to consider the instant proposal. Secretary, Planning Commission supported the view that within the overall constraint of availability of land, the project could be considered for approval.

19. Chairman, JNPT presented the deviations and clarified that the project documents provided for Minimum Guaranteed Cargo and modified definition of Debt Due.

20. The PPPAC granted final approval to the project subject to DoS obtaining independent legal opinion on the admissibility of charging lease rentals in a BoT concession. DoS was requested to forward the revised project documents to the members of PPPAC for record.

(Action: DoS)

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

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List of Participants

- I. Department of Economic Affairs**
- i. Shri Ashok Chawla, Finance Secretary (In Chair)
 - ii. Ms. L. M. Vas, Additional Secretary
 - iii. Shri Govind Mohan, Joint Secretary
 - iv. Ms. Aparna Bhatia, Director
- II. Department of Expenditure**
- v. Ms. Villasini Ramachandran, Additional Secretary
- III. Planning Commission**
- vi. Shri Sudha Pillai, Secretary
 - vii. Shri K. Ranga Reddy, Joint Adviser
- IV. Ministry of Law**
- viii. Mrs. Zoya Hadke, Deputy Legal Adviser
- V. Ministry of Shipping**
- ix. Ms. Kiran Dhingra, Secretary
 - x. Shri Rakesh Srivastava, Joint Secretary
 - xi. Ms. Geetu Joshi, Director
- VI. Visakhapatnam Port Trust**
- xii. Shri Ajeya Kallam, Chairman
 - xiii. Ms. Y Jayanthi, Joint Director
 - xiv. Ch. Srinivasa Rao
- VII. Jawahar Lal Nehru Port Trust**
- xv. Shri S. S. Hussain, Chairman
 - xvi. Shri S.F. Mumford
 - xvii. Shri K.V. Gupta