

F. No. 5/63/2018-PPP
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

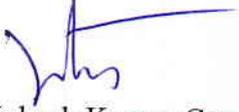
North Block, New Delhi
Dated 21st June, 2019

OFFICE MEMORANDUM

Subject: Record of Discussion of the 87th Meeting of Public Private Partnership Appraisal Committee (PPPAC)

The undersigned is directed to enclose a copy of Record of Discussion of the 87th PPPAC Meeting held on 19.06.2019 under the chairmanship of Finance Secretary & Secretary (Economic Affairs) for information and necessary action. This meeting considered the proposal of Ministry of Shipping for Operation, Management and Development of the Multimodal Terminal at Varanasi on PPP mode.

Encl: as stated above


(Mukesh Kumar Gupta)
Director (PPP)

To,

1. CEO, NITI Aayog, Sansad Marg, New Delhi
2. Secretary, Ministry of Shipping, Transport Bhawan, New Delhi
3. Secretary, Department of Expenditure, North Block, New Delhi
4. Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi
5. Chairman, Inland Waterways Authority of India, Noida, Uttar Pradesh

Copy to:

1. Sr. PPS to Finance Secretary & Secretary (EA)
2. PPS to JS (IPF)

Record of Discussion of 87th Meeting of Public Private Partnership Appraisal Committee held on June 19th, 2019

The 87th meeting of the Public Private Partnership Appraisal Committee (PPPAC), chaired by Finance Secretary and Secretary, DEA (the Chair) was held on 19.06.2019 to consider the proposal of Ministry of Shipping (MoS) for Operation, Management and Development (OMD) of Multimodal Terminal at Varanasi on PPP mode. The list of participants is *annexed*.

2. JS (IPF) informed the PPPAC that the same proposal of Ministry of Shipping was earlier discussed by PPPAC in its 86th meeting held on 28.02.2019 and PPPAC recommended the proposal for the approval of Competent Authority with certain conditions, which are:

- i. Bid documents with the changes recommended by the PPPAC shall be submitted by MoS to the PPPAC members for examination in a timely manner. If it is felt that another meeting of the PPPAC needs to be convened, an appropriate decision will be taken in the matter.
- ii. MoS shall ensure legal vetting of all the revised documents to ensure that there are no discrepancies in the bidding documents (RFQ & RFP) and Draft Concession Agreement.
- iii. MoS to decide whether they need to issue the RFQ again in the light of material inconsistencies in the project description as mentioned in the RFQ, as stated in other bidding documents, and as decided in the current PPPAC meeting.
- iv. MoS may ensure that all the applicable clearances such as environmental etc. required for the project are obtained within the stipulated period of time.
- v. MoS shall obtain prior approval of PPPAC for any change in scope of work or project configuration.
- vi. The entire land (including for non-operational activities) given to the concessionaire should be transferred back to the Authority free of cost after end of the concession period.
- vii. Bidding parameter (Royalty per ton) to be paid by the Concessionaire to the Authority cannot be included as a factor in tariff determination.

3. The Chair inquired about the status with regard to the above PPPAC conditions. Secretary (Shipping) and Chairman (IWAI) confirmed that all the conditions have been fulfilled.

4. Thereafter, some issues raised by NITI Aayog were discussed.

a. **Escrow Account (Clause 9.4.1):**

It was stated that, as per Draft Concession Agreement (DCA) shared by MoS on 20.05.2019, escrow waterfall (clause 9.4.1) places payment of Royalty to the Authority below Concessionaire's debt service. It was pointed out that this is against the interest of the Authority and thereby adversely affects public interest. Chairman (IWAI) clarified that this escrow waterfall mechanism is as per the Model Concession Agreement (MCA) for PPP Projects in Major Ports (2018). After deliberations, it was decided that payment of Royalty to the Authority should be above the concessionaire's debt service obligations in the escrow waterfall mechanism of DCA to protect the interest of the Authority.

b. **Force Majeure (Article 14)**

It was stated that in the DCA, the scope, extent and consequences of Force Majeure need to be very specifically laid down so as to avoid ambiguities and consequential disputes and litigation. Therefore, force majeure clause should (i) include provision of material adverse impact on either

parties for triggering the provision; (ii) spell out the extension of concession period due to force majeure in detail and leaving it to the discretion of the Authority should be avoided; (iii) include detailed provisions for allocating the Force Majeure costs; etc. Secretary (Shipping) clarified that IWAI had strictly followed the MCA for PPP Projects in Major Ports (2018). After deliberations, PPPAC decided that, MoS/ IWAI may consider and decide on the Force Majeure clauses which will be provided by NITI Aayog, for possible inclusion in the DCA. Decision of MoS/IWAI on this would be final.

c. **Termination Payment due to Force Majeure Event (Clause 17.1.1) & on Concessionaire Default (Clause 17.1.2)**

It was pointed out that, Non Political Events should be insured and liability of Authority may be kept at 90% of the Debt Due to incentivize lender's due diligence. In case of other Force Majeure Event, payment of compensation should be kept at Debt Due (less the insurance cover) and 110% of the Adjusted Equity (i.e. value of equity indexed and adjusted on account of depreciation). It was also pointed out that DCA provision (clause 17.1.2) in case of concessionaire default should provide for 90% of the Debt Due only. After deliberations, PPPAC decided that MoS should follow provisions of the Model Concession Agreement (MCA) for PPP Projects in Major Ports (2018). In other words, no change was required to be made on this account.

d. **Minimum Guaranteed Cargo (MGC) (Clause 7.1.3)**

It was pointed out that MGC requirement assigns the risk of low volume/traffic entirely to the Concessionaire, which may be onerous. The Chair pointed out that MGC is essential from performance monitoring perspective and to safeguard the interest of the Authority. After deliberations, PPPAC decided that provision related to MGC should be retained to instill some performance discipline on concessionaire.

5. JS(IPF) highlighted that in PPP projects, Total Project Cost (TPC) should only include capital expenditure to be incurred by the concessionaire and inclusion of investment by Authority would be onerous, especially for Termination Payment. After deliberations, PPPAC decided that investment by Authority will not be included in TPC, which should be defined as per the definition in the MCA for PPP Projects in Major Ports (2018). Therefore, it was decided that "Total Project Cost" means the lowest of: (a) The capital cost of the Project as set forth in the Financial Package, (b) The actual capital cost of the project upon completion, and (c) A sum of INR 334.80 crore as estimated by the Authority.

6. Additional Secretary, D/o Expenditure commented that there are certain discrepancies in the DCA with respect to provisions related to Escrow account. Secretary (Shipping) and Chairman (IWAI) clarified that all payments will flow through the Escrow account. AS Expenditure mentioned that these are only operational kind of minor issues and not policy issues. It was decided that MoS may take an appropriate view on suggestions made by Department of Expenditure.

8. PPPAC recommended the proposal for the approval of the Competent Authority. PPPAC also decided that Ministry of Shipping will circulate the revised documents as noted above to the members of PPPAC for record.

9. The meeting ended with vote of thanks to the Chair.

Record of Discussion of 87th Meeting Public Private Partnership Appraisal Committee held on June 19th, 2019.

List of Participants:

Sl. No.	Name	Designation
1.	Shri Subhash Chandra Garg	Finance Secretary & Secretary (D/o Economic Affairs) – in Chair
2.	Shri Gopal Krishna	Secretary (Ministry of Shipping)
3.	Shri Pravir Pandey	Chairman, Inland Waterways Authority of India
4.	Shri P.K. Das	Additional Secretary, D/o Expenditure
5.	Shri Rajat Sachar	Senior Economic Adviser, Ministry of Shipping
6.	Dr. Kumar V. Pratap	Joint Secretary (IPF), DEA
7.	Shri S K Saha	Adviser, NITI Aayog
8.	Shri Mukesh Kumar Gupta	Director (PPP), DEA
9.	Shri Chandramani Rout	Director, Ministry of Shipping
10.	Shri Neeraj Rawat	Assistant Legal Adviser, D/o Legal Affairs
11.	Shri Manoj Kumar Madholia	Deputy Director (PPP), DEA
12.	Shri Arun Dewan	OSD (PPP), DEA