

**Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell**

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**Empowered Institution for the Scheme for Financial Support to Public
Private Partnerships in Infrastructure**

13th Meeting on April 10, 2008

Record Note of Discussions

The thirteenth meeting of the Empowered Institution (EI), chaired by Additional Secretary, Economic Affairs, was held on April 10, 2008 in North Block, New Delhi. The list of participants is annexed.

Agenda Item 1: Proposal from Government of Andhra Pradesh (GoAP) for in-principle approval for Viability Gap Funding for Hyderabad Mass Rapid Transit System Project.

2. The project was considered by Empowered Institution (EI) in its meeting held on May 1, 2007. The EI had granted approval to GoAP to proceed with further short-listing of bidders and directed that the proposal be submitted for in-principle approval after the Concession Agreement was finalised. Accordingly, GoAP proceeded with further short-listing of bidders by calling for Technical Proposals (TPs) from all the five-qualified bidders. The TPs submitted by the bidders were evaluated by two the independent Evaluation Teams who recommended that the TPs submitted by all the five pre-qualified consortia are in consonance with the stipulations of the TP documents. The Board of Directors of Hyderabad Metro Rail Ltd. and GoAP had declared that all the five pre-qualified consortia were eligible to participate in the Financial Bids. GoAP had, thereafter, submitted the revised proposal and Draft Concession Agreement for in principle approval of the proposal.

3. Representative of Planning Commission pointed out that as GoAP proposed to obtain grant (10% of the project cost) for the project under JNNURM, it may be considered by the Empowered Institution after grant of VGF only after the approval for support under JNNURM was obtained. Joint Secretary, DEA, suggested that if the State government was willing to provide the additional 10% grant component (currently envisaged under JNNURM), the proposal could be considered for VGF support by the EI. Representative of Ministry of Urban Development informed that on date, there was no proposal for considering the project for support under JNNURM. The representative of GoAP confirmed that in case the support under JNNURM was not forthcoming, the State Government would provide additional grant component to the project

4. Representative of Planning Commission indicated that the Draft Concession Agreement could require modifications since it was based on the draft MCA for MRT projects, which was expected to be revised based on comments of DEA and MoUD on the MCA. It was noted that as per the Guidelines for the Scheme for Financial Support to PPPs in Infrastructure, the Draft Concession Agreement was required to be examined and commented upon by the members of the EI within a stipulated period. Hence, the decision of the EI would be based on the comments provided by the members on the project proposal (including the DCA) and the discussions during the meeting. The finalisation of the MCA was a parallel activity and the decision on the applicability of the MCA would be taken prospectively after its finalisation.

5. The following issues relating to the Draft Concession Agreement were discussed:

- i. **The term "Safety Commissioner" in the DCA may be replaced by the "Commissioner for Railway Safety":** Representative of GoAP

informed that the view of the State Government was that the Safety Commissioner could be a person appointed by the State Government. The Chairperson of the EI noted that this was matter of ensuring that the standards of safety are applied in an impartial manner, hence, the decision on selection of Safety Commissioner should not be within the purview of the parent organisation. Representative of MoUD informed that a similar approach was also being observed for Bangalore and Mumbai metro projects which were under construction. The EI noted that the State Government would have to provide an enabling provision through legislation for entrusting safety certification to the Commissioner for Railway Safety. The representative of GoAP agreed with the decision and agreed to confirm it in writing that that they would abide by the stipulations of Ministry of Urban Development on the matter and adopt the rules formulated/ being formulation on the subject by MoUD.

ii. **Completion certificate:** Representative of GoAP agreed to add the formulation suggested by MoUD at the end of Clause 14.4, viz., *"The Completion Certificate issued by the Independent Engineer will form part of application by the Concessionaire to Commissioner of Railway Safety for inspection and issuance of Safety Certificate authorizing the entry of Rail System into commercial service"*. The same would also apply for the provisional certificate also under clause 14.3

iii. **Partial opening of Sections:** It was agreed that an enabling clause would be provided in the draft concession agreement to allow for the opening of rail system for commercial operations in parts, in case the whole system can not be made ready due to unforeseen circumstances.

iv. **Clause 14.3 on Provisional Certificate:** It was noted that if the work which was incomplete was essential for safe operation of the railways, the Independent Engineer would have to withhold Provisional Certificate. It was suggested that an additional proviso may be added to

the Clause, viz., “provided that it may be verified by the Commissioner for Railway Safety that such incomplete works will not materially affect the safety standards of the Rail System”. This was agreed to.

v. **Clause 16.6.1 on Reduction in the scope of project:** It was suggested that the clause may be subject to the following conditions: “ i. The non-completion of the works may not materially impact the project operation; ii. The amount paid to Government may be used to complete the balance work; and iii. Savings on account of reduction in scope may alternatively be used to reduce the loan component of the Project, thereby increasing its viability.” Representative of GoAP agreed to incorporate the same in a suitable manner after obtaining the views of the legal consultant.

vi. **Clause 17.12 – Modification to the rail system:** Representative of MoUD noted that the Metro Act provides the type of works which require sanction of Commissioner of Railway Safety before their execution, namely, opening of additional lines; opening of stations and junctions; re-modelling of yards and rebuilding of bridges/viaducts; and any alteration or reconstruction materially affecting the structural character of any work. These types of works should be specifically included in clause 17.12 which shall require the safety certification in accordance with the applicable law and procedure specified in clause 18.3. This was agreed to.

vii. It was agreed that the Performance Security, as provided in Clause 9.3, should be retained till the Concessionaire expends 40% of the Project Cost.

viii. The comments of MoUD relating to other clauses in the DCA were agreed to.

6. It was noted that total cost of the project included State taxes amounting to Rs. 276.69 crore. The State Government was informed that this would not be

included in the Total Project Cost for the purposes of determining the VGF support.

7. It was noted that the project consists of two components, viz., Rail System and Real Estate Development. However, no upper ceiling on rental values had been fixed. It was agreed that GoAP would examine the matter to ensure that it met the eligibility conditions of the Scheme which required that all tariffs are pre-determined.

8. Subject to the above conditions, the EI recommended the proposal for grant of in-principle approval to Empowered Committee.

(Action: Government of Andhra Pradesh/ PPP Cell, DEA)

Agenda Item 2: Review of Status of the project: Mumbai Metro Rail Project – Corridor II of Phase I (Charkop-Bandra-Mankhurd)

9. The representative of Government of Maharashtra informed that the Draft Concession Agreement for the project had been prepared. However, the same had not been sent since the State Government was awaiting the finalisation of the Model Concession Agreement by the IMG set up for the purpose. The State Government was advised to send the Draft Concession Agreement so that the project could be considered for approval by Empowered Institution and Empowered Committee. MoUD was requested to share the Draft Concession Agreement prepared by GoAP for Hyderabad Metro Rail to facilitate the process.

*(Action: Government of Maharashtra/
Ministry of Urban Development, GoI)*

Agenda Item 3 and 4: Proposals from Government of Gujarat

- i. Strengthening and Widening of two lane road with paved shoulders of Bhuj - Bachau Section of SH-42 in the State of Gujarat.**

- ii. **Improvement to two-lane road with paved shoulders of Nakhatrana-Dayapar-Panandhro road section of comprising of SH-42 and MDR.**

10. The representative of Government of Gujarat confirmed that all observations on the project proposals and the draft concession agreement, made by Planning Commission and Department of Economic Affairs were acceptable to the State Government and would be incorporated. Accordingly, the EI granted in principle approval to the two project proposals.

(Action: Government of Gujarat)

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