

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

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

**24<sup>th</sup> Meeting on July 8, 2010**

**Record Note of Discussions**

The twenty fourth meeting of the Empowered Institution (EI), chaired by Additional Secretary, Department of Economic Affairs (DEA) was held on July 8, 2010 to consider the revised project documents in respect of development of Hyderabad Metro Rail Project on DBFOT (Toll) basis. The list of participants is annexed.

2. The Chairperson welcomed the participants. Joint Secretary, DEA indicated that the proposal from Government of Andhra Pradesh (GoAP) for development of Hyderabad Metro Rail Project was earlier granted in-principle approval for viability gap funding (VGF) up to Rs. 2,362.88 crore with the approval of the then Finance Minister. The project was awarded to the lowest bidder with 10 per cent negative grant. However, the Concessionaire failed to fulfil the contractual obligations in furnishing the Performance Security and achieving Financial Closure within the stipulated time. Thus, the contract was terminated and the Bid Security was forfeited. Subsequently, GoAP re-initiated process for selection of a developer for the project. The shortlist process has been completed and the Request for Proposal (RfP) has been issued. GoAP has sought the approval of the EI to the revised project documents.

3. Joint Secretary, DEA drew attention to the procedural departures from the prescribed Guidelines for the Scheme for Financial Support to PPPs in Infrastructure in respect of the instant project. The RfP for the instant project has already been issued while the Guidelines provide that the financial bids should be invited after approval of the project by the Empowered Institution.

4. It was further noted that Planning Commission had not sent their Appraisal Note to the project documents circulated by the EI Secretariat. Planning Commission had sent an Appraisal Note, a half page note, indicating that the project was discussed with HMR and Planning Commission's legal advisers. The *revised documents sent by GoAP* were found to be in order. The request of the EI Secretariat for sharing the Record of Discussion of the pre-Appraisal meeting with GoAP and

copy of the Appraisal of the Legal Advisers was not responded to. It was noted that this was the third instance of breach of procedure laid down under the Scheme, by the Planning Commission and it may be brought to the notice of the Member Secretary.

5. Adviser, Planning Commission indicated that they had interacted with GoAP and made their observations on the project documents. Since Planning Commission found the revised documents to be in order, the Appraisal Note was not exhaustive. Furthermore, in case the EI Secretariat was recommending that Planning Commission may not directly interact with the project sponsors, it may be thus indicated explicitly for record and future implementation. Joint Secretary, DEA reiterated that the concern was with regard to the breach of procedure. In the instant project, after circulation of the project document by the EI Secretariat, bilateral discussions were held with project sponsors; the Appraisal Note on the project documents, circulated by DEA, were not shared with other members of the EI; the project documents were amended and addendum was issued to the shortlisted bidders without seeking prior approval of the EI to the proposed changes. It was requested that the procedure prescribed in the Guidelines may be followed and members of the EI kept informed of the advice being given to the project sponsors.

6. The Chairperson observed that there was a need for transparency and adherence to the Guidelines of the Scheme while appraising a project. GoAP was asked to explain the overriding circumstances for not adhering to the prescribed procedure and seeking post-facto approval of EI after issue of RfP, and also to clarify the reasons for keeping the members of EI uninformed about effecting changes in the project documents was questioned.

7. Principal Secretary, GoAP acknowledged that certain lapses in procedure had occurred. It was emphasised that while GoAP had been considering re-bidding the project with the documents earlier approved by EI, changes were made on the advice of Planning Commission and Ministry of Urban Development (MoUD). It was assured that the prescribed procedure would be, henceforth, followed and transparency maintained. The Chairperson reiterated that while there was no objection to amending documents where necessary changes should be effected with prior approval of the EI. Further, it was necessary to ensure that all four departments, which are members of the EI/EC are kept informed of the process being followed.

8. Joint Secretary, DEA invited the representatives of GoAP to brief about the project proposal. The representative of GoAP stated that subsequent to the termination of the Contract, the GoAP initiated a fresh procurement process for selection of new developer based on competitive bidding. The total cost of the project was Rs 12, 132 crore and the VGF sought was Rs 2362.88 crore. The cash

inflow of the project consists of fare collection and commercial/real estate exploitation. The concession period was 35 years. The project IRR was 10.12 per cent and with real estate, it was 17.02 per cent. The broad scope of work was to develop elevated corridors at 3 lines with total 71.16 kms.

9. Officer on Special Duty, MoUD informed that they had sent detailed comments on the project documents; while most observations had been agreed to by the State Government, there were certain outstanding issues:

- i. **Cost enhancement:** It was noted that there was a slight enhancement of the project cost. HMR was requested to confirm that the cost to be incurred on R&R and shifting of utilities was not a component thereof. MD, HMR Ltd confirmed that the Total Project Cost eligible for VGF purposes was unaltered. Further, it would be clarified to the bidders that total VGF admissible was 40% of the TPC admissible for VGF support.
- ii. **Reforms:** Implementation of reforms listed as Annexure-II of the appraisal note of MoUD may be made a conditionality by EI to the Sponsoring Authority for approval of the project. It was noted that similar reforms were also being undertaken by Kolkata, Chennai and Mumbai while implementing the metro projects. The representatives of GoAP agreed to the same.
- iii. **Business Plan:** The bidders may be asked to submit detailed business plan while bidding for the project. Such a provision was made in respect of the Mumbai Metro Line II approved by EI and EC and was expected to safeguard the interests of the Project Sponsor in the event of extremely aggressive/unrealistic bidding by the bidders. The representatives of GoAP agreed to the same.
- iv. **Security of the Metro infrastructure:** The cost of the entire security infrastructure as well as the operating cost would be borne by the Concessionaire. After detailed discussion, it was decided that the security expenditure would be borne by the Concessionaire on the lines of the CoS decision on security of metro rail systems. All non-recurring expenses on security equipments would be borne by the Concessionaire and recurring expenses on salaries of CISF personnel etc. would be borne by the Authority as a sovereign function. The representatives of GoAP agreed to the same.
- v. **Effect of variation in traffic:** Article 29 of the Concession Agreement which deals with variation in concession period due to variation in traffic i.e. traffic guarantee would be in line with Mumbai Metro Line II which didn't provide any traffic guarantee. The representative of the GoAP indicated that the Clause was as per the earlier DCA approved by GoI and any change of the same would effect the viability of the project. It was clarified that the maximum extension possible was 7

years (20 per cent of the concession period of 35 years) if traffic threshold was not met. Principal Secretary, GoAP informed that the land values in Hyderabad had witnessed a steep fall during the last couple of years; hence, some additional comfort to the bidders was required. Infact, most bidders and lenders, during a consultation meeting with GoAP had sought incorporation of cash guarantees, which was not agreed to. Joint Secretary, DEA indicated that the project had its own robustness and had received a negative grant of 10 per cent in 2008. Instead of taking a minimum present value of land for the entire concession period, an average land value throughout the concession period should be considered for arriving at viability of the project and not allowing windfall profit to the potential developer/bidders. Most of the bidders would also evaluate the proposal in a similar manner while bidding.

- vi. **Encumbrances on property development (Clause 5.2.):** Since the instant project was a transport project and not a real estate project, it should be the obligation of the Sponsoring Authority that the transport project delivered first and then the real estate component should follow. MoUD's observation regarding dovetailing creation of encumbrance on real estate development with COD under clause 5.2.5 of DCA generated considerable discussion. The representative of GoAP indicated that the Clause aimed at enhancing the commercial attractiveness of the project for the bidders. Director, Planning Commission informed that there were adequate safeguards in the DCA to ensure that the transport project would be completed; hence allowing encumbrances on the property from the third anniversary of the COD could be considered. It was noted that the matter had also been considered by the CoS on execution of Metro Rail projects in India, where the principle recommended by MoUD was accepted for all metros in the country. It was decided to adhere to this principle and issue an addendum to DCA accordingly.
- vii. **Safety:** Under Clause 18.3 of the project DCA, the Sponsoring Authority would replace 'Safety Commissioner' with 'Commissioner of Railway Safety'. The representatives of GoAP agreed to the proposed change.
- viii. **Bid evaluation:** Since the project had a large financial commitment from Government of India, a representative of Government of India may be present during the bid evaluation. The representatives of GoAP agreed to the same.

10. Director, Department of Expenditure stated that DoE had no comments on the proposal; all observations of MoUD were supported.

11. Director, DEA indicated that DEA had sent observations on the project documents. In their response, HMR had agreed to most of the observations. The outstanding issues were:

- i. **Additional Concession Fee:** The project DCA provided that the Concessionaire would share revenues with the HMR after 20<sup>th</sup> year from CoD. The Additional Concession Fee would be 1 per cent of Total Realisable Fare (net of taxes) in the 21<sup>st</sup> year, 2 per cent in the 22<sup>nd</sup> year and continue to increase by 1 per cent every year till a maximum of 20 percent of total Realisable Fare. The formulation earlier approved by the EI was Additional Concession Fee upto 10 per cent of the total Realisable Fare. The revenue share expected from the Concessionaire from the 20<sup>th</sup> year of CoD would be taken into consideration by the bidders and enhance the VGF quoted by them while bidding for the project. It was decided that the formulation of Article 26 of the Concession Agreement that was earlier approved earlier by EI (i.e. Additional Concession Fee upto a maximum of 10 per cent of total Realisable Fare net of taxes) would be restored in the project DCA. The representatives of GoAP agreed to the same.
- ii. **Effect of variation in traffic growth:** Joint Secretary, DEA observed that Article 29 of the DCA provided the trigger point for invoking Effects of Variation in Traffic Growth at 2.5 per cent, may be reconsidered as this trigger may be low. The representatives of GoAP agreed to increase it to 5 per cent. The representative of MoUD considered the threshold to be less; it was recommended that the approval of five per cent should not be treated as a precedent for subsequent metro projects. This was agreed to.
- iii. **Change in the bid variable:** It was noted that extensive change has been made in the bid variable. The clause on Premium had undergone considerable change and provided for different scenarios of bid response involving grant, early commencement of Additional Concession Fee as well as upfront Premium on COD. It would be useful to adopt a simple model. After discussion, it was decided that HMR may consider suitably incorporating the bid variable adopted by NHAI, which was approved by B.K Chaturvedi Committee, with an appropriate annual escalation. This Premium (if quoted) would be in addition to the Additional Concession Fee.
- iv. **Viability Gap Funding:** The representatives of GoAP were requested to clarify to the Bidders that the maximum grant admissible to the Concessionaire shall be Rs. 4,725.60 crore, which is 40 per cent of Total Project Cost (TPC) of Rs. 11,814 crore for the purposes of estimating VGF, as approved earlier by the Empowered Committee and the Finance Minister.

12. The project documents were granted approval subject to the following conditions:

- i. The extension of concession period under Article 29 would be subject to a maximum variation of 20 per cent over the original Concession Period of 35 years i.e. a maximum of 7 years.
- ii. Article 5.2.5 of the DCA would be suitably amended to prescribe that encumbrances on any asset forming part of the real estate development would not be made before COD.
- iii. It would be clarified to the bidders that maximum grant admissible to the Concessionaire shall be Rs. 4,725.60 crore, which is 40 per cent of Total Project Cost (TPC) of Rs. 11,814 crore for the purposes of estimating VGF, as approved earlier by the Empowered Committee and the Finance Minister.
- iv. Article 26 of the DCA would be suitably modified to align the bid variable (in the event the bidder quotes a Premium) with the bid variable adopted by NHAI and which was approved by the CCI, with an appropriate annual escalation.
- v. The Clause on Annual Concession Fee, as earlier approved by the EI, would be restored.
- vi. The term 'Safety Commissioner' would be replaced with 'Commissioner of Railway Safety' in the project DCA.
- vii. Security expenditure would be in line with the decision of the Committee of Secretaries (CoS) on security of metro rail systems.
- viii. Reforms advised by MoUD would be undertaken by the Sponsoring Authority.
- ix. The representative of Government of India would be present during the bid evaluation.

**13.** The EI noted that the Total Project Cost, VGF sought and key project parameters had not undergone a change with reference to the project parameters earlier approved by the Empowered Committee and the Finance Minister. Hence, the project may not require reconsideration by the EC. Adviser, Planning Commission indicated that they will inform whether the above was agreeable to Planning Commission.

**14.** The meeting ended with a vote of thanks to the Chair.

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