

**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**

41st Meeting on 17 July, 2012

Record Note of Discussions

The forty first meeting of the Empowered Institution (EI), chaired by Additional Secretary, Department of Economic Affairs (DEA) was held on July 17, 2012. The list of participants is annexed.

2. The EI noted that there were fourteen proposals under consideration, two for grant of final approval and twelve for grant of in-principle approval for viability gap funding (VGF) support. These included two proposals from Government of Maharashtra for grant of final approval for VGF support, and one proposal each for grant of in-principle approval for VGF support for State Highway projects from Government of Karnataka and Government of Maharashtra, and ten proposals for establishing Senior Secondary Schools with VGF support from Government of Rajasthan. The numbering of the agenda items in the minutes is as per discussion in the EI and are different from the Agenda circulated for the meeting.

Agenda Item I: Proposal from Government of Karnataka (GoK) for grant of in-principle approval for: Two laning with paved shoulders, Gotur-Kagewad sections of SH-44 (km 0.0 to km 3.12), SH-12 (km (171.9 to km 116.60) and SH-53 (km 2.30 to 0.0) under DBFOT.

Total length: 60.23 km; Total Project Cost: Rs. 174 crore; Cost of pre-construction activities to be financed by GoK: Rs. 17.76 crore; Concession Period: 21 years including 1.5 years of construction period. VGF from Government of India: Rs. 35.20 crore

Major development works/ structures: Major Bridges: 2; Minor bridges: 9; Flyover: Nil; Bypass/Realignment: at 3 locations for 4.45 km; Major Junctions: 7; Minor junctions: 24; Toll plazas: 2 (Km. 159.82 & km 142.45); Underpasses: Nil; Culverts: 74; Bus Bays/ shelters: 36; Truck Lay Bys: 2, Causeway: 1

3. Director, DEA informed that the project was considered by the EI in its 40th meeting, held on June 11, 2012. The grant of in-principle approval to the project was deferred since the members of the EI were in agreement that the proposed concession period of 26 years may result in early termination and the three proposed toll plazas on a 60 kms stretch would inconvenience the users. The EI had advised Government of Karnataka to reexamine the project structure and consider revision in concession period and reduction in the number of toll plaza locations.

4. The EI noted that no representative from Government of Karnataka was present in the instant meeting of the EI. However, GoK had confirmed, vide a letter dated July 10, 2012, that the concession period has been reduced from 26 years to 21 years and the TPC has been marginally reduced from Rs. 175.85 crore to Rs. 174.0 crore due to reduction in number of toll plazas. Further, the EI noted that GoK has sent the revised project documents wherein the toll plaza locations have been reduced from 3 to 2 by deleting a toll plaza at km 120.29, in line with the advice of EI.

5. All the members of EI were in support for grant for in-principle approval to the project.

6. The EI granted in-principle approval to the project for TPC of Rs. 174 crore with maximum VGF of Rs. 34.80 crore (20 percent of TPC) under the Scheme, subject to fulfilment of the following conditions:

- a. GoK shall ensure that the legal vetting of the revised documents is undertaken to ensure that there are no discrepancies in the contract documents and the final DCA shall be shared with the short listed bidders.
- b. GoK shall ensure land acquisition in respect of the project to provide 90 per cent Right of Way (ROW), in accordance with the provisions of the Concession Agreement (MCA) of the project.

- c. GoK shall obtain clearances such as environment and forest clearance, before commencing work on the project site.
- d. GoK shall obtain prior approval of the EI before effecting any change in TPC, scope of work or project configuration as noted above.
- e. GoK shall circulate the final documents to the members of the EI for record.

(Action: GoK)

Agenda Item II: Proposal from Government of Maharashtra (GoM) for grant of in-principle approval for: Two/ four laning of Chandwad-Manmad-Nandgaon Road section of SH-24 from km 0.000 to km 47.200 and km 0.000 to km 16.900 of SH 16 alongwith construction of Manmad and Nandgaon by-pass under DBFOT.

Total length: 65.66 km (4-lane- 43.13 km, 2-lane- 20.83, Service road-1.70 km at Chandwad); Total Project Cost: Rs. 521.44 crore; Cost of pre-construction activities to be financed by GoM: Rs. 34.80 crore (including byback cost of Rs. 17.40 crore); Concession Period: 20 years including 3 years of construction period. VGF from Government of India: Rs. 104.28 crore

Major development works/ structures: Major Bridges: 9; Minor bridges: 16; RoBs: 2, Bypass: 2 (Manmad by-pass of 4-lane- 11.720 km & Nandgaon bypass of 2-lane-5.63 km); Underpasses-11, Junctions improvements: 27; Toll plazas: 2 of 16 lane (at km. 6.5 at Village Dugaon & km 6.22 at Manmad by-pass); Culverts-112, Bus bays-13, Service duct for pipeline crossing- 34.

7. Director, DEA informed that the project was considered in the 40th meeting of the EI, held on June 11, 2012, and was deferred, pending submission of detailed information from GoM. The information sought by EI included:

- i. Fresh traffic survey (at locations proposed to be two laned with PSS and two laned) to establish, *based on the actual traffic survey estimates*, that the project structure is appropriate.
- ii. Confirmation by GoM that the location of Toll Plazas is optimal to ensure there is no leakage of traffic or extra charge of user fee, especially at the stretch proposed to be two laned with PSS/two laned.
- iii. Notification of toll rates by GoM for the instant project.
- iv. Correction in the concession period to 20 years, scope of work indicated in Schedule B and the performance security specified in the DCA

8. Deputy Secretary, PWD, GoM, stated that a fresh traffic survey has been carried out from June 25, 2012 to July 1, 2012 at two locations, namely Panewadi (32/200)

(where two-laning with PSS is proposed) and at Gangadhari (Nandgaon ROB) where two-lane Section has been proposed from Nandgaon to District Border road stretch. In the first section, the total traffic was 1,900 PCUs and in the second section 483 PCUs. Based on the traffic estimates, the instant project has been restructured to a two-lane road for a length of 20.83 km from Panewadi to Nandgaon. Further, a stretch of 16.9 km from Nandgaon to District Border has been deleted from the project's scope of work. The TPC has been revised to Rs. 521.44 crore from the earlier cost of Rs. 557.34 crore. The concession period has been reduced to 20 years, as advised by the members of EI. It was confirmed that the toll rates for the instant project shall be the same as for the category of State Highway projects costing Rs. 100-400 crore, as per the Toll Policy of the State, notified on July 30, 2009. Performance Security has been revised to Rs. 26.07 crore, viz. 5 per cent of the TPC. Hence, it was requested that the project may be granted approval.

9. Joint Secretary, DEA observed that GoM in the 40th meeting of the EI had informed that the project catered to the traffic plying to oil depots and market for onion trade at Manmad. The stretch also provided onward connectivity to Aurangabad. It would be advisable to develop the project stretch as two-laned with paved side shoulder. Deputy Secretary, PWD, GoM responded that the recent traffic estimates reveal that the traffic was only 1900 PCUs; thus, two-laning with PSS may not be necessary.

10. The Chair enquired whether there would be substantial increase in cost by inclusion of paved side shoulders in the project's scope of work. Deputy Secretary, PWD, GoM informed that the additional cost for providing for paved side shoulders would be Rs. one crore per km. It was added that the increased project cost may adversely affect the viability of the project and requested that the project may be approved as two-laned road.

11. Joint Secretary, MoRTH observed that construction period of 3 years appears to be on the higher side for developing a two-laned, 66 km stretch. Further, the project documents reveal that two other concessions are concurrently in operation on the project stretch, with concession period till 2015 and 2055 respectively. Hence, the existing concessions may need to be terminated before the commencement of the proposed concession in order to avoid legal disputes. Deputy Secretary, PWD, GoM responded that the construction period of 3 years has been proposed in view of

Nandgaon ROB, since ROB clearances from Ministry of Railways are yet to be obtained and that is time consuming process. With regard to the existing concessions, the concession period for one would end in 2015 and the COD for the instant project is likely to be achieved by the end of 2015. For the Nandgaon ROB, GoM proposes a buy back arrangement from the existing concessionaire. Joint Secretary, MoRTH advised that these facts and the proposed buy back arrangement may be clearly indicated in the project's DCA. This was agreed to.

(Action: GoM)

12. The Chair advised that clearances for Nandgaon ROB should be processed simultaneously with Ministry of Railways, and all efforts made to obtain it by the Appointed Date. Further, there is likelihood that the construction for the instant project may get completed prior to the expiry of the existing concession on the stretch. Hence, the project's DCA may clearly indicate the date on which the toll can be charged by the Concessionaire of the instant project for the stretch where another concession is in operation till 2015. This was agreed to.

13. All the members of EI were in support of grant for in-principle approval for the project.

14. **The EI granted in-principle approval** to the project for TPC of Rs. 521.44 crore with VGF up to Rs. 104.28 crore (20 percent of TPC) under the Scheme, subject to the fulfilment of the following conditions:

- a. GoM shall provide a detailed note on the two existing concessions as well as the proposed buy back arrangement to members of EI. The provisions for buy back and the date from which the toll may be charged by the new Concessionaire at the locations of the two existing concession would be clearly indicated in the DCA of the instant project.
- b. GoM shall undertake corrections in the project DCA, in compliance with the observations of DEA and Planning Commission, which have been agreed to by GoM in their response to the appraisal notes.
- c. GoM shall ensure that the legal vetting of the revised documents is undertaken to ensure that there are no discrepancies in the contract documents.
- d. GoM shall ensure land acquisition in respect of the project to provide 90 per cent Right of Way (ROW) in accordance with the provisions of the Concession Agreement of the project.

- e. GoM shall obtain clearances such as environment and forest clearance, before commencing work on the project site.
- f. GoM shall obtain prior approval of the EI before effecting any change in TPC, scope of work or project configuration as noted above.
- g. GoM shall circulate the final documents to the members of the EI for record.

(Action: GoM)

Agenda Item III: Proposal from Government of Maharashtra (GoM) for grant of in-principle approval for Construction of two/ four-laning of Nanded-Narsi Road section of SH-6 from km. 264.000 to 307.000 and Narsi-Degloor to State Border section under DBFOT.

Total length: 77.70 km (4 lane-43 km, 2 lane- 34.700 km); Total Project Cost: Rs. 238.79 crore; Concession Period: 25 years including 2 years of construction period. VGF from Government of India: Rs. 47.76 crore, VGF from Government of Maharashtra: Rs. 47.76 crore

Major development works/ structures: Major Bridges-3; Minor bridges: 19 (Widening -3, new-16) ; Toll plazas: 2; by-passes-2.

15. Director, DEA informed that the project was considered in the 40th meeting of the EI, held on June 11, 2012. The grant of final approval to the project was deferred pending submission of final executed concession agreement duly indicating the date of its execution, as well as the final financing arrangements of the project, duly authenticated by the Concessionaire and the Lead Financial Institution.

16. Deputy Secretary, GoM informed that amended Concession Agreement has been re-executed and submitted to the EI. The final financing structure, in respect of the project, with TPC as Rs. 238.79 crore has been shared with members of EI. The project's financing arrangement consist of the VGF from GoI as Rs. 47.76 crore (20 per cent of the TPC), VGF from GoM as Rs. 47.76 crore (20 per cent of the TPC), Equity from Concessionaire as Rs. 96.40 crore and loan of Rs. 200 crore, with SBI as LFI. It was informed that the authentication from the LFI was expected shortly and would be shared with members of EI.

17. All the members of EI were in support of grant for final approval to the project.

18. **The EI granted final approval to the project for TPC of Rs. 238.79 crore, with VGF of Rs. 47.76 crore (20 per cent of TPC) under the Scheme, subject to submission of the financing arrangement by GoM, duly authenticated by the Lead Financial Institution.**

(Action: GoM)

Agenda Item IV: Proposal from Government of Maharashtra (GoM) for grant of final approval for: Two laning of Shirur-Tajband-Mukhed-Narsi road and 2-lane with PSS Nanded-Narsi Road section of SH-225 on DBFOT (Toll) basis

Total length: 105 km; Total Project Cost: Rs. 190.18 crore; Concession Period: 25 years including 2 years of construction period. VGF from Government of India: Rs. 38.04 crore, VGF from Government of Maharashtra: Rs. 38.04 crore

Major development works/ structures: Major Bridges-1; Minor bridges: 19 ; Junction improvements: 33, Toll plazas: 3

19. Director, DEA indicated that the project was granted in-principle approval by the EI in its 19th meeting held on August 12, 2009. The bidding process has been completed with VGF of Rs. 76.08 crore, i.e. 40 per cent of the TPC. The concession period has been reduced from 30 years to 25 years. Deputy Secretary, PWD, GoM informed that reduction in concession period has been on account of the changes in the State's Toll Policy, notified on June 30, 2009. The EI had been informed about the change in concession period, vide letter dated March 22, 2010 and the change was effected prior to the RFQ stage, and all bidders were aware of the same.

20. Joint Secretary, MoRTH pointed out that the L-1 bidder had initially quoted a grant of Rs. 96.02 crore, i.e. 50.48 per cent of TPC, which has been reduced, after negotiation, to Rs. 76.08 crore (i.e. 40 per cent of the TPC). Thus, it may be confirmed whether this is in accordance with the Scheme and whether negotiation are permissible in PPP projects. Further, equity support of Rs. 96.02 crore is higher than the equity envisaged by the Concessionaire for this project which may not be as per the Model Concession Agreement. Director, DEA informed that VGF above 40 per cent of the TPC is not admissible under the Scheme. Since the revised offer limits VGF to 40 per cent of the TPC, the same can be considered for grant of approval. Ideally, no negotiations should be undertaken on the bids received for PPP projects. However, the financial instructions in some State Government provide for negotiations with the L-1 bidder

prior to award of the project. Hence, DEA, while advising that negotiations may not be entered into, do not reject such proposals under the Scheme. This position is in view of the instructions of the Central Vigilance Commission (CVC) that allows negotiations with the L-1 bidder. Hence, the same is accepted, though not recommended as a practise in PPP projects.

21. Deputy Secretary, PWD, GoM stated that in Maharashtra, it was the norm of the Finance Department to undertake negotiations. Hence, across all projects, negotiations are entered into, including the instant project. With regards to equity to be expended by the Concessionaire, it has been informed by the Concessionaire in writing that the equity in respect of the project is Rs. 96.30 crore, which is greater than the equity support of Rs. 76.08 crore.

22. Joint Secretary, DEA queried about the financial quotes received from the others bidders. Deputy Secretary, PWD, GoM informed that the other offers for the project from the shortlisted bidders were 61 per cent and 63 per cent of the TPC. Accordingly, the negotiations were carried out with the L-1 bidder who had quoted 50.48 per cent of the TPC. Thus, it was requested that the project maybe granted final approval.

23. All the members of EI were in support of grant for final approval for the project.

24. The EI **granted final approval to the project for TPC** of Rs. 190.18 crore and with VGF of Rs. 38.04 crore (20 per cent of TPC), under the Scheme.

(Action: GoM)

Agenda Item V: Proposal from Government of Rajasthan (GoR) for grant of in-principle approval for development of 50 Senior Secondary Schools (Classes VI to XII) as 10 projects in five districts of Rajasthan on DBFMOT basis.

Total number of projects: 10 projects in 10 districts; Total no of Schools: 50;

Total Schools in each Project: 5 in number;

Total Project cost for each project: Rs. 17.19 crore

Total Project cost for all 10 projects: Rs. 171.90 crore

Concession Period: 30 years including 1.2 years of construction period.

VGF from Government of India for each project: maximum Rs. 3.438 crore

VGF from Government of India for 10 projects: maximum Rs. 34.38 crore

Major development works/ structures: Construction of School building and complex, School having classes atleast from Class VI-XII, alongwith ancillary facilities and operation and maintenance.

Student intake: 560 students as the total design capacity, with 2 sections and 40 students per section, student teacher ratio targeted is 30:1

Location of the proposed 50 Senior Secondary Schools (i.e. 10 project Districts and 50 villages) :

<u>Districts:</u>	<u>Villages:</u>
Ajmer	Bittur, Shergarh, Jawla, Sarmaliya, Udaipurkhurd
Banswara	Monadungar, Paadla, Bijoli, Badi, Mhoodiya Wajja, Nawagoan
Bhilwara	Irass, Raydha, Reeth, Bhojpur, Taswariya
Chittaurgarh	Dorai, Badawali, Gangrar, Palka, Pawtia
Dungarpur	Shithal, Khadlai, Maadvakhapdha, Tonkwasa, Palbhokla
Nagaur	Sinodh, Indali, Badhana, Bichawa, Ratanga
Pratapgarh	Narayan Kheda, Bhachundla, Siyakhedhi, Somavati, Madhvi
Rajasamand	Togi, Jhallo ki Madaar, Bikawas, Peepli, Dodiyaan, Bhava
Tonk	Dihkoliya, Lambakala, Mahapura, Chiroj, Baholi
Udaipur	Sawana, Paatia, Kolia, Bilkhai, Mokaat

25. Principal Secretary, School Education, GoR presented the proposal. Two divisions, namely the Ajmer and Udaipur Divisions have been selected in the first phase of the roll out of the Gyanodaya Senior Secondary School Programme with the objective to provide quality senior secondary education by harnessing private sector efficiencies. The 10 projects, consisting of 50 schools in 10 districts of the two Divisions in Rajasthan, have been structured by availing of assistance from the Scheme for India Infrastructure Project Development Fund (IIPDF), implemented by DEA. The EI, in its 21st meeting held on February 12, 2010, had granted permission to the State Government to invite RfQs for the projects. The projects have received a good response at the RfQ stage and 49 applicants have been shortlisted. Further, during recent discussions with the State Government, the short-listed bidders have affirmed their interest in the project. It was informed that pending inclusion of Education as a sub-sector eligible for VGF under Scheme, the projects had not been posed for grant of in-principle approval for VGF support. The sector has been included under the VGF Scheme in May 2011. Thereafter, the project proposals were submitted to the EI in August 2011 for grant of in principle approval for VGF support under the Scheme. All

the observations of the members of the EI, i.e., DoE, DEA, MHRD and Planning Commission had been responded to by the State Government.

26. The representative of GoR presented the key features of the proposal. The State Government proposes to establish new senior secondary schools (from class VI to class XII) under the Gyanodaya Senior Secondary School Programme on PPP basis with VGF support from Government of India. The 50 Gyanodaya schools, thus proposed, would have an intake capacity of 560 students per school, with each class having two sections and with 40 students per section. The schools will be affiliated either with Central Board of School Education (CBSE) or Rajasthan Board of School Education (RBSE) and shall provide two specialisation streams for all classes, viz., Science and Commerce/Arts. The minimum physical infrastructure and facilities as well as the selection of teachers shall be in accordance with the Standards and Bye-laws prescribed by the affiliating Board.

27. The representative of GoR informed that the intake of students shall be through three student categories.

- a. The first category would be the voucher students (25 per cent of the students in class VI to VIII and 50 per cent of the students in class IX to XII). These students would be admitted as per GoR's prescription in accordance with the Gyanodaya Programme notified by the State. The State Government shall pay user charges (through vouchers) in respect of these students to the Concessionaire in lieu of the Concessionaire imparting education to these students, in accordance with the provisions of the DCA
- b. The second category would be exempt students (25 per cent of the students in class VI to VIII and 50 per cent of the students in class IX to XII). Exempt students shall be in accordance with the Right to Education Act (if applicable) and other Laws applicable, from time to time. In the event the Exempt Students are less than 25 per cent of the Student Capacity, then the Authority has the right to require the Concessionaire to admit students as nominated by the State Government against such vacant seats. The Concessionaire shall not be entitled to any tuition fee in respect of these students from the State Government; nor shall the Concessionaire levy any tuition fee in respect of these students.

- c. The third category would be the non-voucher students (50 per cent of the students in class VI to XII). The tuition fee in respect of these students shall be paid by the students, subject to ceiling fee prescribed in the DCA.

28. The Chair queried whether the catchment area for the voucher and non-voucher students was the same. Further, the nomenclature 'voucher students' may appear discouraging to the students, thus selected, and may, therefore, be reviewed by the State Government and changed to 'Gyanodaya students' or some other appropriate terminology. Principal Secretary, GoR informed that the catchment area for all the three categories of students shall be the same. Further, in order to ensure that the Concessionaire imparts quality education, continued enrolment of voucher students is the responsibility of the Concessionaire, after 7 years of concession. The Concessionaire shall be receiving lower voucher amount (pro-rata) if it enrolls and retains lesser voucher students. It was agreed that the State Government would review the nomenclature of the student categories under the project.

(Action: GoR)

29. The representative of GoR informed that the State Government shall provide construction grant up to Rs. 250 lakh per project. The construction grant is linked to the covered area in the school (@ Rs. 500 per Sq feet with a ceiling of Rs. 50 lakh per school). The bid variable is VGF from Government of India, up to 20 per cent of the total project cost of Rs. 17.19 crore per project. The Chair queried about the criteria that would be adopted to ensure that the construction, size of class rooms etc. are satisfactory. Principal Secretary, GoR informed that the project DCAs prescribed that the construction shall be as per Kendriya Vidyalaya norms. These norms provide precise details on the nature of facilities that have to be provided in the schools, including size of class rooms, number of laboratories, etc.

30. The Chair queried whether the State Government anticipated any escalation in the project cost since the project has been posed to the EI on August 30, 2011. Principal Secretary, GoR responded that the cost estimates had been firmed up in April, 2010. However, the State Government has not examined whether the costs require a revision. In the event, revision is necessary, the State Government would communicate the same to the EI. The Chair advised that prior approval of the EI may be obtained before effecting any increase in the project cost in the project documents. This was agreed to.

(Action: GoR)

31. The representative of GoR informed that seven precise key performance indicators (KPIs) have been specified to monitor the performance of the Gyanodaya Schools. The Gyanodaya Schools shall also be subject to the Quality Assurance Programme of the State Government, under which 10 to 15 per cent schools are randomly selected, evaluated on pre-specified parameters and graded as A, B or C by the State Government. To ensure that the expected level of academic performance is achieved by the Gyanodaya Schools, 25 per cent of the voucher payment will be linked to their performance against the KPIs. The Chair requested the State Government to share the framework of the Quality Assurance Programme. This was agreed to.

(Action:GoR)

32. The Chair complimented the Government of Rajasthan for formulating an innovative project and requested the members of EI to comment on the proposal.

33. **Deputy Secretary, School Education and Literacy, MHRD**, stated that the Department have already conveyed that they have no objection to the project and have sought two clarifications from the State Government. First, a confirmation that all the eligible bidders have proven track record in the field of education, the requisite financial standing and the commitment and preparedness to provide necessary infrastructure and governance structure. Second, a confirmation that the provisions of the Right to Education Act, 2009 have been complied with while structuring the projects.

34. Principal Secretary, GoR confirmed that all the eligible shortlisted bidders have requisite experience (or tie-up with an entity with experience) in the field of education. Further, the provisions of the RTE Act are currently not applicable to the Gyanodaya Schools as per the clarification communicated by MHRD. However, through the provision of exempt students in the project, the State Government is of the view that it would be able to accommodate any change in the guidelines of this evolving Act that would make it applicable to private Senior Secondary schools.

35. **Deputy Secretary, Department of Expenditure**, at the outset, stated that their Department supports the proposal for VGF assistance under the Scheme. However, a few clarifications were sought on the responses of GoR on the appraisal note of DoE in respect of the project:

- 35.1 Deputy Secretary, DoE queried about the basis of differentiation between Voucher / Non-Voucher/Exempt category of students and the manner in which priority shall be accorded in the event the voucher students are oversubscribed. Principal Secretary, GoR responded that Voucher students were those whom the authority shall pay the user charges/ tuition fee in the form of annual tuition fee. Exempt students shall be those students that may be required to be admitted as per Applicable Law, such as the RTE Act, in classes VI to VIII, and for whom annual tuitions fee shall neither be paid by the Authority nor the Concessionaire shall levy any tuition fee. The priority for vouchers is as per the guidelines of the State Government, with priority being first accorded to girl students, then reserved category and students of minority community. System of draw of lots shall be adopted in the event the seats under the RTE Act are over-subscribed, as per extant instructions.
- 35.2 Deputy Secretary, DoE queried whether increase in the tuition fee over time was provided in the projects and whether any other costs/fees shall be chargeable to the Voucher students. Principal Secretary, GoR informed the Gyanodaya Scheme provides increase in the tuition fee, indexed with the rate of inflation. It was confirmed that no additional costs are envisaged to be charged from the Voucher students and the same has been incorporated in the project documents.
- 35.3 DS, DoE sought information about the legal safeguards that have been put in place to ensure that in the event of termination of the concession, there is no obligation to take the Gyanodaya teachers on the Government rolls. Principal Secretary, GoR responded that the Gyanodaya schools are private schools, with 51 per cent or more equity being brought in by the private sector in the implementing special purpose company. The teachers shall be appointed by the School Management, as per CBSE/RBSE norms, and thus it was unlikely that such claims for absorption on government rolls may arise. The State Government will ensue a fresh procurement process at least 365 days prior to expiry the concession period or take a decision to extend the concession period, for a suitable time period, as it may deem fit, 365 days prior to the expiry of the concession period. However, in the event there is an early termination, the schools shall be extended the same administrative oversight as is provided to the 'aided schools' in the State. In the event of failure of the management, or other events that make it difficult for the school to function without Government's intervention, such 'aided schools' continue to remain private schools under the district administration till another management is put in place

to take over its functioning. However, these aided schools are always treated as private schools and no claims have been made to absorb their staff on government's rolls. Hence, it was not envisaged that there would be any claim or action to treat the teachers as Central or State government employees. The Chair advised that this may be made amply clear through a preamble/ specific provision in the project documents. This was agreed to.

35.4 Deputy Secretary, DoE stated that there is need to undertake viability analysis of the projects, to ensure that the Concessionaires do not wilfully decide to run the school(s) only on non-voucher students citing non-availability of voucher students or Voucher students' seats being filled while the market determined seats remaining empty to unfilled. Principal Secretary, GoR responded that the transaction advisor appointed for the project had undertaken the market survey to ascertain the availability of students in the catchment area of the projects. Further, this aspect shall also be determined by the applicants and continuous interest from applicants has been there over the last four years of the projects development.

35.5 Deputy Secretary, DoE queried about the safeguards that have been put in place to ensure that the infrastructure created is not used for non-educational purposes. Principal Secretary, GoR responded Clause 4.1 of the Project Land Lease Agreement restricts use to establish, operate, manage and maintain the Senior Secondary School; and to undertake Supplementary Activities in the Senior Secondary School. Penal provisions have been provided in the event the Concessionaire utilises the facilities for the restricted activities or activities not related to education.

36. The Chair requested Advisor, Planning Commission to share their observations on the project. Advisor, Planning Commission stated they had communicated their observations vide letter dated November 11, 2011. Further, during the 37th meeting of the EI, held on January 6, 2012, when the proposal was considered earlier, Planning Commission had requested that DEA may confirm in writing that the proposal complies with the Scheme. Joint Secretary, DEA had responded in the said meeting that a written response shall be sent. Adviser, Planning Commission stated that they have not received the written confirmation from DEA in this respect.

37. Director, DEA pointed out that all the observations of Planning Commission were responded to by GoR, and duly forwarded by DEA. Further, attention was drawn

to the para 44 of the Record of Discussion of the 37th meeting of EI, whereby, written confirmation was provided that as per the VGF Scheme, the following conditions must be met with in order for the projects to be eligible under the Scheme:

- a. Sector eligibility
- b. Project must be bid out on transparent and competitive basis
- c. Bid parameter must be VGF and grant from GoI shall be maximum 20 per cent of the TPC
- d. 51 per cent equity in the project must be from the private sector
- e. User charges must be upfront defined

Since the proposal satisfies all the above criteria, it is, prima facie, eligible for consideration for grant of VGF support.

38. Joint Secretary, DEA also drew attention to the Record of Discussion of the meeting 37th meeting of EI, wherein Planning Commission was requested that, pending response from DEA, the Planning Commission could commence the appraisal of the project documents by sending them to their legal consultants.

39. The Chair requested Advisor, Planning Commission to indicate their key concerns.

40. The representative of GoR presented the observations of Planning Commission and the response/clarification thereon by the State Government.

41. The representative of GoR stated that Planning Commission, in their appraisal, have indicated that payment of annual fee by the State Government of 50 per cent students is in form of vouchers. As such, this payment is in the nature of annuity payment to the Concessionaire. GoR has clarified that the Project is primarily based on User Charges. The State Government shall be paying user charges (annual fee per student) in respect of 50 per cent of the students in classes IX to XII and 25 per cent of the students in classes VI to VII to the Concessionaire in return for the Concessionaire imparting education to these students, in terms of the DCA. Hence, no annuity payment is envisaged in the project.

42. Director, DEA further stated that annuity is a payment by a public Authority that covers five components in respect of the PPP project, viz., Equity by the

Concessionaire, the Debt raised by the Concessionaire to execute the project, the returns on Debt and Equity of the Concessionaire as well as the expenditure on Debt and Equity. In the instant project, these components are not being covered completely by the 'voucher' paid by the State Government. The voucher payment in the Gyanodaya Schools requires to be treated as a user charge paid by the State Government for voucher students. The voucher is, in fact, lower than the market rate of tuition fee (i.e. tuition fee for non voucher students). To that extent, there is cross subsidisation between the fees of voucher and non voucher students; the gap in the overall viability of the arrangement is proposed to be met by the VGF quoted by the Concessionaire. Furthermore, the VGF Scheme is based on a critical condition that the user charges are determined up-front. It does not state that the user charges cannot be paid by the Government. Reference was invited to earlier projects approved for VGF support by EI, specifically to the transmission power projects, which have been structured by Planning Commission. The 'Unitary Charges' were provided therein by the Public Authority executing the concession agreement to the Concessionaire as the payment of the user charge for provision of the infrastructure service.

43. The representative of GoR informed that Planning Commission has observed that payment of construction grant at the rate of Rs. 500 per sq. ft. of constructed area may breach the ceiling on the total grant to the project (i.e. 40 per cent of TPC). Representative of GoR confirmed that the total VGF including the contribution from GoR towards construction grant shall not exceed 40 per cent of the TPC. Hence, the provisions of the VGF Scheme are satisfied.

44. The representative of GoR informed that Planning Commission had queried about the viability of the project. It was informed that in the Project Information Memorandum (PIM) the project is viable only after taking into account the revenue from supplementary sources. This revenue is dependent upon assumptions taken in the financial model. However, in the event this income does not materialise due to location in the rural areas, the financial analysis indicates a negative cash flow. Thus, requiring VGF assistance.

45. Joint Secretary, DEA requested the State Government to present the viability and scenario analysis which has been undertaken for the project. Representative of GoR presented the sensitivity analysis, for three scenarios. The EI noted that the equity IRR for the project ranged between 7.6 to 11.6 percent without VGF support, establishing

the need for VGF for the project. It was further noted that the project's viability shall be assessed by the market forces, and will be reflected in the outcome of the bidding. In the event the project is viable without VGF, the bid response shall be NIL VGF under the Scheme, as has been observed for numerous road sector projects approved by the EI under the Scheme. Hence, the project may be tested in the market since there is tremendous potential of scalability across the country.

46. With regards to Right to Education Act (RTE), Principal Secretary, GoR stated that the Section 12 (i) (c) of the RTE is not applicable to the Gyanodaya Schools which shall be starting from Class VI. This has been clarified by MHRD to GoR. Hence, the proposal is not violative of the RTE Act.

47. The Chair queried whether there were any other concerns of Planning Commission with the project. Advisor, Planning Commission indicated that they would like to seek time for sending the project DCA to their legal consultants. Principal Secretary, GoR stated that the project has already been delayed and requested that the project may be granted approval so that the RfP may be invited. In case members of EI had any concerns, the same may be discussed in the instant meeting of the EI and resolved. Director, DEA stated that the period mandated for appraisal under the VGF Scheme is one month for projects based on MCA and three months for other projects. Director, DEA suggested that the project may be considered for approval since all issues and queries of members of EI have been discussed and satisfied. GoR may be allowed to proceed with the bidding process and the observations of Planning Commission may be sent to GoR on their receipt. Advisor, Planning Commission stated that in order to comply with its observations additional time of at least 30 days may be provided to the bidders in the RFP. The same was agreed to.

(Action: Planning Commission & GoR)

48. All the members agreed to grant in-principle approval to the project. The EI noted that the costs for the projects were sent by the State Government in 2011. There is a possibility of increase in the cost. In such an event, the EI advised the GoR to seek prior approval of the EI for the enhanced TPC and VGF before communicating the same to the shortlisted bidders. This was agreed to.

(Action: GoR)

49. **The EI granted in-principle approval** to all the ten proposals having cumulative TPC of Rs. 171.90 crore with cumulative VGF of Rs. 34.38 crore for the projects under the Scheme (20 percent of TPC each of the ten projects), subject to fulfilment of the following conditions:

- a. GoR shall undertake corrections in the project DCA in compliance with the observations of EI in the meeting and those which have been agreed to by GoR in their response to the appraisal notes of members of EI.
- b. GoR shall ensure that the legal vetting of the revised documents is undertaken to ensure that there are no discrepancies in the contract documents.
- c. GoR shall obtain prior approval of the EI on any change in TPC, scope of work or projects' configuration as noted above.
- d. GoR shall circulate the final documents to the members of the EI for record.

(Action: GoR)

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