

Location of the proposed 50 Senior Secondary Schools (i.e. 10 project Districts and 50 Villages for locating each school):

<u>Districts:</u>	<u>Villages considered for locating each school:</u>
Ajmer	Bittur, Shergarh, Jawla, Sarmaliya, Udaipur khurd
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

3. Director, DEA informed that the instant proposal has been considered and granted in-principle approval by the EI in its 41st meeting held on July 17, 2012 for VGF of Rs. 3.44 crore per project (i.e. 20 per cent of TPC of Rs. 17.19 crore). While granting approval, the EI had noted that the costs of 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. Subsequent to the grant of in-principle approval, Government of Rajasthan (GoR) has revised the project cost estimates of July 2011 and has updated the project costs in September 2012. It was noted that cumulatively for all ten projects the Total Project Cost (TPC) has increased from Rs. 171.9 crore to Rs. 207.4 crore. The main items of escalation are cement prices that have increased by 27 percent; increase in steel prices by 13 percent and increase in labour cost by 50 percent, an overall increase in cost of 20.65 percent from the earlier proposal. The VGF requirement for the ten proposals has increased from Rs. 34.38 crore to Rs. 41.48 crore. GoR has sought approval for increase in project cost and, consequently, approval for higher VGF in respect of all ten projects.

4. The Chair queried whether the earlier estimates were indeed of July 2011 and the reasons for increase in labour charges by 50 per cent within 14 months. Representative of Planning Commission indicated that these concerns had also been highlighted by them and there is a possibility that the earlier TPC had been underestimated.

5. Principal Secretary, School Education, GoR confirmed that the earlier TPC had been estimated in July 2011. The TPC indicated at the time of invitation of RfQ for the projects in April 2010 was around Rs. 2.5 crore per school which was revised to Rs. 3.44 crore in July 2011 while posing the proposal to the EI for grant of in-principle approval. This cost has now been

revised to Rs. 4.148 crore in September 2012. The revision in cost estimates, including the labour charges are based on latest available market rates which are a realistic assessment of current prices and not due to seasonal fluctuations. It was pointed out that there were wide circle wise variations for many items of the Schedule of Rates, which are not linked to the actual payments made in the market. Thus, in order to mitigate the risk of unrealistic cost assessments, bill of quantities for each project has been aligned to market rates. The Chair queried whether the rates were for Jaipur of the State as a whole. Principal Secretary, GoR confirmed that rates applicable for the State have been adopted.

6. The Chair noted that the Planning Commission in their appraisal note has questioned the revised cost estimates and queried whether the justification by GoR was acceptable. Representative of Planning Commission stated that as GoR has confirmed that the increase in project cost is based on market rates, therefore, the EI may accept the same.

7. The Chair noted that the representative of Ministry of Human Resource Development (MHRD) were not present in the meeting. Principal Secretary, GoR informed that MHRD has remained supportive of the project and the proposal may be approved.

8. All the members of the EI agreed to the proposed increase in the Total Project Cost and the concomitant increase in the VGF in respect of the ten projects.

9. Representative of Planning Commission indicated that they had sent the appraisal note on the proposal, highlighting their concerns. Many observations have been accepted, as conveyed by GoR vide communication/ email received on the date of the meeting. Planning Commission has examined the provisions that have not been accepted by GoR. Planning Commission's concerns with the proposal/ outstanding issues required resolution by the EI. It was stated that:

- a. GoR has proposed to provide a pre-determined construction grant up to Rs. 50 lakh per school. It was stated that Scheme mandates that the amount of VGF required for any project should be determined by an open competitive bidding process. Therefore, pre-determination of the grant component may be reviewed.
- b. The proposed schools are to be established on Government land and entails support by way of VGF grant and construction grant along with reimbursement of tuition fees. Hence, GoR may reconsider whether schools should be categorized as private schools, aided schools, or Government schools. In addition, the requirement of establishment of CBSE affiliated schools, with regard to entities being trust or society,

needs to be settled since the Scheme allows VGF support only for private sector companies.

- c. The user charges, paid as voucher, have been determined in the Concession Agreement for initial 10 years of the total concession period of 30 years, which implies that for about two-third of the concession period, the user charges are undetermined and left open for interpretation at a later date. This is a violation of the pre-conditions of the Scheme.
- d. Modification to the Concession Agreement with respect to the clause on Capacity Expansion was sought. The clause 20 of the DCAs provides that the Authority may, after 5 years from the date of the agreement, frame suitable guidelines relating to increase in design capacity of the schools. Hence, as per this clause, increase in design capacity of the schools has been left open ended as no details for increase in capacity expansion over the period of concession have been provided.
- e. Modification to the Concession Agreement was sought in respect of sub-clause 25.4 (b) which relates to termination payments, for termination for any reason other than Force Majeure, during construction period. It was indicated that in case of termination on account of Concessionaire's event of default prior to Commercial Operation Date (COD), the Authority is entitled to receive Debt Due and 50 per cent of the Base Termination Payment, which appears harsh towards to the Concessionaire, as it is in addition to the loss of performance security, equity amount spent and other investments made by the Concessionaire on the project and is unlike the standard contract provisions for PPP projects.
- f. No provision of Independent Engineer (IE) has been made, either to monitor the construction works or to supervise operation and maintenance phase of the project. IE is critical for proper implementation of the project and the IE is expected to be paid on 50:50 basis by the Government and Private entity to remain a neutral body required for monitoring purposes.
- g. With reference to the RfP document, the sub-clause 2.1.15, it was stated that a bidder shall be liable for disqualification, if any legal, technical or financial advisor of the Authority in relation to the projects is engaged by the Bidder. This disqualification shall not apply where such adviser was engaged by the Bidder, in the past but its assignment expired or was terminated six months prior to the date of issue of RfQ for the Projects. Nor will this disqualification apply where such adviser is engaged after a period of three years from the date of commercial operation of the relevant Project(s). Applicability of this clause for 3 months prior to issuance of RfQ and 3 years from COD is a short term period from conflict point of view and may be reviewed.

- h. The definition of Total Project Cost should clearly indicate the cost of the project in rupees terms and should not invite reference to earlier bidding documents such as the Project Information Memorandum (PIM), etc.
- i. In all PPP projects, no references are expected to be made to pre-bid meetings at RfQ stage, Project Information Memorandum, consultations or to any other document other than the Concession Agreement and its Schedules. Thus, the DCA document needs to be made comprehensive without any reference to earlier project documents or consultations.
- j. Failure to obtain affiliation from CBSE or any other Board of Secondary Education, Rajasthan constitutes a material breach. Hence, this should be clearly mentioned as a material breach leading to Concessionaire's default and a trigger for termination.
- k. Schedule 13 and 14 of the Concession Agreement relating to the details of District Level Committee and State Level Committee have been left blank and these may be filled up prior to issue of RfP.

Pre-determined Construction Grant

10. Principal Secretary, GoR indicated that the construction grant is clearly provided in the DCA and does not contravene the provisions of the Scheme. Director, DEA stated that this matter has been discussed by the EI in its 41st meeting. The Scheme allows for a maximum VGF up to 20 percent of the TPC. In case the Sponsoring Authority proposes to provide any assistance over the said VGF, it shall be restricted to a further 20 per cent of the total project cost. During the earlier meeting of EI, it was established that the construction grant proposed by GoR does not exceed 20 per cent of the project cost. Hence, the provisions of the Scheme are satisfied.

11. The Chair observed that the State has decided to pre-fix its grant component and this is clearly indicated in the bidding documents. Thus, the bidders would be aware that the bidding is based on VGF restricted to maximum 20 percent of the TPC. While for other projects the range of VGF available is 40 percent of the TPC, in these proposals, the range available for VGF component is only 20 percent of the TPC. Hence, the bids would be received accordingly.

12. Joint Secretary, DEA observed that, possibly, the concern of Planning Commission emerged from whether the proposed format would vitiate the bid process. As indicated by the Chair, the format proposed by GoR would only result in the range of possible bids being reduced to a maximum of 20 per cent of TPC. Principal Secretary, GoR confirmed that the bidding process remains an open, competitive and transparent process.

13. All the members of EI agreed to the proposal's structure with maximum VGF of 20 percent of TPC along with a pre-determined construction grant component.

Categorisation of Schools

14. Principal Secretary, School Education, GoR, in response to query in para 5.b above, stated that the Gyanodya projects are private schools. Regarding the applicability of section 12(1) (b) in respect of Aided Schools, it was pointed out that Ministry of Human Resources Development (MHRD) has clarified the following in writing to GoR : *"In accordance with the provisions of the clause (b) of sub-section (1) of section 12, schools receiving aid would need to provide free education to such percentage of students in elementary classes which equals the percentage of recurring aid received by it from the Government to the annual recurring expenditure incurred by the school, subject to a minimum of 25 per cent . Therefore, if 80 per cent of the school's annual recurring expenditure is met by recurring aid received from the Government, it would need to provide free education to 80 per cent of its students in elementary classes."* Further, MHRD has clarified the following with regard to provisions of sections 12 (1) (c) of the Right to Education Act (RTE) Act, *"the objective of this section, providing for admission in Class 1 or pre-primary class of children belonging to disadvantaged group and of weaker section, till completion of elementary education is to ensure that children at the tender age of 6 or 5 from varying background and strata learn to grow together in a homogenous and non-discriminatory environment. Accordingly, in respect of schools which begin at higher classes and admit higher age-group children, the provisions of section 12 (1) (c) would not apply"*. Additionally, it was stated that the definition of Aided Institution in clause 2(b) of 'The Rajasthan Non-Government Educational Institution Act, 1989 and Rules, 1993' is as follows *"a recognised institution which is receiving aid in form of maintenance grant from the State Government"*. It was informed that earlier, 1000 aided Institutions were supported by GoR through aid in the form of salary of the teachers being provided as maintenance grant. Aided institutions no longer exist in Rajasthan and around 5000 teachers earlier employed in these aided institutions have opted for employment with the Government. Only 17 aided institutions continue, which are special schools for visual, hearing and physically challenged wherein only teachers' salary is being paid as State Government. The instant projects do not fall under the ambit of Aided Institutions as no maintenance grant is provided for the projects.

15. The Principal Secretary, GoR emphasized that these schools cannot be treated as Government Schools as these are private schools where the construction and operation of the schools rests solely with the private sector entity. The schools are being made in the PPP format. Since they are BoT projects, the land belongs to the Government and at the end of the concession or

the early termination of the concession, the schools will revert to the Authority for re-bidding to a new entity or further appropriate action. The projects are not violative of the provisions of the RTE Act and can be best described as private schools awarded to private sector party for a fixed period under the PPP mode. In response to a query from representative of Planning Commission, it was confirmed that the project has been cleared by the State Government including the regulatory framework. The legal representative of GoR confirmed that the proposed schools adhere to regulatory regime of the education sector.

16. All members of the EI agreed that the explanation about designation of the schools as private schools may be accepted. The Chair observed that undertaking development of schools in PPP mode is a new phenomenon. GoR may in due course consider developing a suitable regulatory framework for addressing the issues that require to be addressed in respect of the Gyanodaya schools in PPP format. Principal Secretary, School Education, GoR agreed to the same.

(Action: GoR)

Pre-determined Voucher payments for the Concession Period

17. Principal Secretary, GoR, in response to query in para 5.c above, stated that the State's Finance Department had approved the user charges only for the first 10 years, hence, the determination of tuition fee has been indicated for initial 10 years of the concession period. The Chair stated that the user charges must be pre-fixed for the entire concession period. Joint Secretary, DEA observed that if the voucher payments are not pre-determined for the entire concession period, it would constitute a major risk for the private entities and would get reflected through their bid response. The bids would be unduly high and may become unresponsive. Principal Secretary, GoR agreed to the view of the EI; however, she stated that this would require approvals from the State Government and only after the same, the change can be incorporated in the project DCAs. The Chair emphasized that a pre-determined formula for providing user charges must be specified upfront for the entire concession period and indicated in the project documents.

(Action: GoR)

Explicit Guidelines for Capacity Expansion

18. Principal Secretary, GoR in response to query in para 5.d above, informed that capacity expansion clause has been allowed as the intent is to capture different geographies and varying needs of expansion for increasing the student capacity in future. Most of these projects lie in backward and rural regions of Rajasthan. The constructed area of the project, market potential and market rates vary for each school and across all projects. Hence, presently it cannot be conclusively stated whether capacity expansion would be actually required or

the extent of capacity expansion that would be required to be carried out by the Concessionaires. Further, the entire cost of capacity expansion shall be taken up by the Concessionaire with no additional grant from GoR. The capacity expansion shall be beneficial to the State since a greater number of Gyanodaya students would, thus, get educated at these schools. At the end of the concession period, the entire project, alongwith the additional capacity created, shall be handed over to the Government.

19. Joint Secretary, DEA stated that if capacity expansion is allowed without pre-fixing the details for such expansion in student capacity, it would mean that an additional viability enhancer is being provided. Further, the provision is open to interpretation by the bidders and each bidder would assess the market potential differentially. Since no change in TPC or higher termination payments are envisaged for the higher capacity creation, some bidders may, while bidding, take into account the likely enrichment of costs through such an activity at a later date and bid for higher VGF. Therefore, it may distort the process of bidding. Hence, this provision is not cost neutral.

20. Joint Secretary, DEA indicated that the provision would also bring in an element of discretion. There may be a case where a particular Concessionaire's proposal for expansion is accepted by the Government while another Concessionaire's proposal is not. Further, if the latter Concessionaire/preferred bidder had taken into account this cost and quoted a higher VGF, this would be an unnecessary expenditure by GoI in respect of the project. No negotiations are allowed in PPP projects and allowing negotiations would not be a transparent mechanism of bidding. Hence, the guidelines on capacity expansion may be provided upfront. At a later date, in case there are changes in guidelines, these can be dealt under the clause on Change in Law. One option could be that the bid document states that the voucher rates for students taken under the increased capacity coverage will be as per the prevalent rates at that time, with future indexing.

21. The Chair advised GoR to indicate upfront the guidelines for capacity expansion applicable during the entire concession period and the conditions and/or circumstances for their applicability.

(Action: GoR)

Debt Due and Termination Payment prior to COD upon Concessionaire's Event of Default

22. Principal Secretary, GoR, in response to query in para 5.e above, stated that provisions on Debt Due and Termination Payments prior to COD upon Concessionaire's Event of Default have been provided in respect of these projects based on the advice of their legal consultants. Representative of

Planning Commission stated that standard clause on termination, as adopted in other projects undertaken on PPP format, may be followed and the bidder cannot be expected to make payments to the Authority. In the event of termination due to Concessionaire's default prior to COD, there should not be any termination payments made to the Concessionaire or to the Government. Joint Secretary, DEA stated that based on the principles of equal risk sharing, it is unfair to expect that the bidder pays to the Authority Debt Due and 50% of the Base Termination Payment. Further, no mechanism of such recovery has been provided in the DCA. The Chair indicated that standard contract provisions for PPP projects must be followed. Principal Secretary, GoR agreed to effect suitable changes to the said clause and align it with the standard contract provisions.

(Action: GoR)

Independent Engineer

23. The representative of GoR, in response to query in para 5.f above, stated that separate provisions for Independent Engineer (IE) have not been made as GoR already has an independent body named the 'Rajasthan Council for Elementary Education'. This independent body has expertise to monitor construction works and shall undertake monitoring of construction works for these projects as well. In response to a query from the Chair, it was stated that funding for this body is being made under the Sarva Shiksha Abhiyan (SSA) by the Government. The Chair stated that as the funding is entirely by the Government, this independent body may not be entirely autonomous from the Government's point of view. For PPP projects, third party supervision and monitoring is considered as a better model of management to ensure a qualitative output. Hence, an IE may be provided at least for the period of construction. Even beyond this, in order to ensure that the required standards are maintained, periodic independent evaluation even if through stand alone contracts may be considered. It was noted that there shall be marginal increase in cost through which the bidder shall load onto the project cost as a part of the bid. Thus, incorporating a separate entity with payments made 50 percent each by the Government and private sector entities is desirable in order to create a suitable mechanism for monitoring the project activities.

24. The members of the EI endorsed the views of the Chair. GoR was advised to incorporate the provision for a separate IE or independent entity in the Concession Agreement for monitoring the projects' service delivery, at least during the construction period.

(Action: GoR)

Engagement of Adviser

25. Principal Secretary, GoR, with respect to query in para 5.g above, stated that time frame provided is adequately built in the RfP as an advisor has been disassociated with a project 6 months before release of RfQ and 3 years after the COD. It was noted that the actual financial bid may be a year later from the six months prescribed in this clause and by then project parameters may have changed substantially. Thus, this clause of RfP may be retained. All the members of EI agreed the same.

Rectification in the DCA to remove Cross-referencing

26. Principal Secretary, GoR apropos the query in para 5.h and 5.i, accepted that the TPC would be stated upfront in the project DCAs. The draft Concession Agreements will be revised to ensure that it is comprehensive and that all references to other bidding documents, pre-bid meetings, etc. have been deleted.

(Action: GoR)

Affiliation to Board and Details of Education Committees

27. Regarding queries in para 5.j and 5.k, Principal Secretary, GoR indicated that material breach has been clearly indicated in the Concession Agreement; however, in case of any ambiguity it shall be reviewed. The details of the State Level Committee and District Level Committee, applicable for each project shall be appropriately filled in Schedule 13 and 14 prior to release of the RFP.

(Action: GoR)

28. The Chair complimented the State Government and observed that the proposal is one of the first type of proposals based on VGF in the education sector with innovative mix of students where financial support is being extended to certain category of students. He observed that terminologies such as 'Gyanodaya students', 'exempt students' and other students, currently being used to categorise the students may be reviewed since it creates a false notion of inequality in endowment of knowledge and segregation of students. Terminologies employed in the Concession Agreement should promote equality amongst all students. Principal Secretary, GoR agreed to carry out appropriate amendments to the same with the approval of the State Government.

(Action: GoR)

29. Director, DEA enquired whether the State Government proposes to enhance the construction grant available to the projects in view of the increase in prices and total project costs. Principal Secretary, GoR indicated that no increase of construction grant is envisaged and the same is restricted up to Rs. 50 lakh per school. The EI noted that the total grant component in respect of the projects shall effectively be lesser than 40 per cent of the TPC permissible as per the guidelines of the Scheme.

30. Deputy Advisor, Planning Commission queried about the status of the teachers that shall be employed at these schools and whether, in the event of early termination or upon transfer to Government at the end concession period, these teachers would be absorbed by the Government. Principal Secretary, , GoR stated that GoR has maintained its earlier stance and teachers or other staff shall not be absorbed as employees of the Government as they will be directly employed by the private entities that shall implement the projects under the terms and conditions entered through the Concession Agreements.

31. All the members of EI were in agreement to grant approval for increase in project cost and release of the RfP document.

32. The EI granted approval in respect of all the ten projects for increasing each project's Total Project Cost to Rs. 20.74 crore with maximum VGF support of Rs. 4.148 crore (i.e. 20 percent of the TPC) under the Scheme. Cumulative TPC for all the ten projects was approved as Rs. 207.4 crore with cumulative maximum VGF of Rs. 41.48 crore under the Scheme. The approval is subject to the following conditions:

- a. GoR will specify a pre-determined formula for providing user charges for the entire concession period and indicate it in the project documents.
- b. GoR will indicate upfront the guidelines for capacity expansion applicable during the entire concession period and the conditions and/or circumstances for its applicability, as per the options indicated. These changes will be incorporated in the bidding documents prior to release of the RFP
- c. GoR will incorporate the provision for a separate IE or independent entity in the Concession Agreement for monitoring the projects' service delivery, at a minimal during the construction period and also reconsider the post-construction review procedures in view of the importance of maintaining prescribed standards.
- d. GoR will revise the draft Concession Agreements to ensure that it is comprehensive and that all references to other bidding documents, pre-bid meetings, etc. have been deleted. The details of the State Level Committee and District Level Committee, applicable for each project will be appropriately filled in Schedule 13 and 14 .
- e. GoR will amend provision in the draft Concession Agreements with respect to Termination payments for termination for any reason other than Force Majeure, during construction period (Clause 25.4b) and align it with standard contract provisions applicable to PPP Projects.

- f. GoR will review terminology used for students supported with voucher payments and appropriately amend to avoid discriminatory differences between different categories of students.
- g. GoR will incorporate the observations of Planning Commission, DoE, MHRD and DEA with respect to corrections in the project DCAs and its Schedules, as agreed to in all their responses to the appraisal notes and in compliance of the directions of EI.
- h. GoR will obtain prior approval of the EI on any change in TPC, scope of work or project configuration as noted above.
- i. GoR will circulate revised projects documents to the members of EI.

(Action: GoR)

Agenda Item II: Proposal from Government of Madhya Pradesh (GoMP) for grant of final approval for Two laning with granular shoulders of Manawar-Singhan-Kukshi section of MDR from Km 0/00 to Km 14.750 in Manawar town & km 23.60 to km 0.00 (Barwani to Kukshi) in the state of Madhya Pradesh on BOT (Toll):

Total length: 38.23 km; Total Project Cost: Rs. 94.57 crore; Cost of pre-construction activities: to be financed by GoMP: Rs. 2.16 crore; Concession Period: 30 years including 2 years of construction period.

VGF from Government of India: Rs. 18.91 crore (20 percent of Rs. 94.57 crore); Actual VGF quoted by L-1 bidder: Rs. 27.32 crore (28.8 per cent of Rs. 94.57 crore); VGF from Government of Madhya Pradesh: Rs. 8.41 crore (8.8 percent of Rs. 94.57 crore)

Major development works/ structures: Major Bridges: 2; Minor bridges: 12; Major/ Minor road junctions: 3/22; Toll plazas: 1 (km 7.675); Culverts: 56; Bus Bays/ shelters: 67

33. Director, DEA informed that the project was previously considered and granted in-principle approval in the 36th EI meeting, held on December 1, 2011. Madhya Pradesh Road Development Corporation (MPRDC), GoMP has confirmed compliance to the conditions set by the EI during the in-principle approval stage. Further, it was stated that there were two outstanding issues with respect to the appraisal note issued by Department of Economic Affairs. These issues relate to (a) provisioning of project specific Fee notification of the toll rates as a part of Schedule R of the Concession Agreement, (b) provisioning of project's appraisal note as undertaken by the lending institution. It was informed that both these documents have been made available prior to the onset of the instant meeting and have been found in order.

34. Superintendent Engineer, Ministry of Road, Transport and Highways (MoRTH) observed that the project retains Culverts which had lesser than 12m width as against the Manual of Standards and Specifications (MSS). Chief Engineer, MPRDC responded that out of total 56 Culverts provided, only 4 Culverts had deviations to the MSS. Out of the 4 Culverts, 3 of them had 11 m width and there was no land available to widen the Culvert as these culverts were provided in the built-up areas. Only 1 Culvert had 8.4 m width, which would be widened by providing an extra pipe and is covered under the Change in Scope clause of the Concession Agreement. In response to a query by the Chair, it was responded that it was not possible to widen beyond 11m with regard to the 3 Culverts.

35. Superintendent Engineer, (MoRTH) queried that 67 bus shelters have been provided while no provision for bus bays have been made. This may impede the traffic flow. Chief Engineer, MPRDC responded that these bus shelters were provided at the behest of the request of local communities and it not expected that all buses or other vehicles will stop at these locations. Further, representative of Planning Commission added that the project is only for two-laning with granular shoulders, hence the traffic may not be very high to impede smooth movement.

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

37. The Empowered Institution granted final approval to the project for viability gap funding of Rs. 18.91 crore (20 percent of TPC of Rs. 94.57 crore) under the Scheme.

(Action: GoMP)

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