

Subject: Minutes of meeting of the Empowered Institution held on 22.01.2007

The 8th meeting of the Empowered Institution (EI) to consider proposals received for Viability Gap Funding (VGF) was held on 22.01.2007 at 3.00 PM in Fresco Room. The list of participants is annexed.

2. The Empowered Institution considered the following proposals:

- (A) Proposals received from Govt. of Maharashtra on State Highways:
 - (a) Four laning of Manjarsumba-Lokhandi-Sawargaon-Latur
 - (b) Four laning of Jalna-Deoulgaonraja-Berala Phata including Deoulgaonraja bypass
 - (c) Four laning of Berala Phata-Chikhali-Khamgaon
- (B) Mumbai Metro (Charkop-Bandra-Mankhud corridor)

(A) Highway projects from Maharashtra:

3. The Empowered Institution while considering the proposals received from Maharashtra noted the following:

- (i) A Model Concession Agreement (MCA) for State highways has been issued and the State Government may consider adopting the same. The Project Authorities indicated that all future proposals forwarded under the VGF Scheme would be based on the MCA. It was requested that as the present proposals are already at an advance stage, these may be considered on the existing Concession Agreement (CA) as approved by the Empowered Institution for the two projects approved earlier. As regards the issues raised by Planning Commission in the Concession Agreement, the Project Authorities agreed to amend the agreement to address all the issues.
- (ii) The traffic levels do not justify 4-laning of the highways. The Project Authorities indicated that the above projects are located in the backward region of Marathwada and the State Government has decided to undertake these projects as part of the overall plan for development of this region. It was thus requested to consider these projects in this background.
- (iii) Planning Commission requested the Project Authorities to standardise the specifications for highway projects. In this regard, reference was made to the Manual of Specifications and Standards developed by IRC for National Highways. The Project Authority agreed to consider the Manual for four laning prepared by IRC and adopt the same for State projects with or without modifications for uniform application to all future PPP projects
- (iv) It was noted that the concession period should be determined based on the traffic and the carrying capacity of the highway and not on the viability of the project. The Project Authorities were asked to fix the concession period based on this criterion.

- (v) It was noted that the responsibility of obtaining environmental clearance should rest with the State Government/Project Authority and should not be transferred to the concessionaire, as the former is better suited to address this issue.
- (vi) On the issue of appointment of independent engineer, it was noted that in case the remuneration is left open ended, the payment cannot be entirely borne by the Concessionaire. It was agreed that a ceiling may be imposed on the fee to be paid to the independent engineer and any excess fee will be borne by Government of Maharashtra (GOM). It was agreed that the independent engineer shall also be appointed during operation period. It was also agreed that the condition of Engineer-in-charge shall be deleted.
- (vii) It was agreed that the provisions relating to the setting up of a Steering Group shall be deleted.
- (viii) Project Authority clarified that required land is available and there are no issues relating to land acquisition.
- (ix) It was noted that the release of VGF would be as per the Scheme.

4. The Empowered Institution decided to grant "in principle" approval to the above proposals subject to the following:

- (a) The Project Authority will adopt the Model Concession Agreement for State Highways published by the Planning Commission in all future projects.
- (b) The Concession Agreement for the above proposals would be amended as per the decisions taken in the meeting
 - i. The concession period for the four laning of Manjarsumba-Lokhandi-Sawargaon-Latur would be 25 years and for the other 2 projects it would be 20 years each.
 - ii. responsibility of obtaining environmental clearance would rest with the State Government/Project Authority and should not be transferred to the concessionaire, as the former is better suited to address this issue.
 - iii. Process of appointment of independent engineer would be made transparent and his remuneration will not be left open ended but would be subject to a ceiling. The concessionaire will meet the fee till this level and if it crosses this ceiling it will be borne by GOM. The ceiling could be percentage of the capital cost, say 1%. The independent engineer shall also be appointed during operation period.
 - iv. the condition of appointment of Engineer-in-charge shall be deleted.
 - v. provisions relating to the setting up of a Steering Group shall be deleted.

- vi. release of VGF would be as per the Scheme.
- (c) Project Authorities will revise the relevant clauses and send the same for approval.

(B) Mumbai Metro Project

5. The Empowered Institution considered the Mumbai Metro project next. Mumbai Metropolitan Region Development Authority (MMRDA) made a presentation on the project. The following issues were discussed relating to the Project:

- (a) **Tariff:** MMRDA clarified that the tariff was pre-determined and the provisions relating to the Regulatory Authority for tariff fixation would be deleted.
- (b) **VGF:** MMRDA confirmed that the GOI sought from GOI would be limited to 20% and GOM confirmation for meeting the grant sought over this limit would be communicated.
- (c) **GOM equity:** It was noted that equity participation by GOM in the Project is not advisable as it commits the government to large funds without achieving any apparent benefit. Also it indicates that the State Government has necessary funds thus not requiring GOI grant assistance. MMRDA indicated that this was the decision of the GOM and based on the consideration that this was a public transport project requiring some control and supervision by the government. It was indicated that this control and supervision could be more effectively achieved through the concession agreement rather than the share holders agreement. MMRDA indicated that as the matter pertains to GOM this would be taken up with them for a final view.
- (d) **Consultants:** MMRDA confirmed that it would appoint a reputed legal firm as its legal consultant and a separate financial firm as its financial consultant in addition to any other firm being retained on technical matters.
- (e) **Capital Cost:** MMRDA indicated that the capital cost would be firmed up in due course and before seeking bids.
- (f) **Bidding process:** MMRDA indicated that they would adopt a two-stage bidding process, RFQ and RFP. Planning Commission suggested that technical shortlisting should be done at the RFQ stage and those firms that are found capable of implementing the project should be shortlisted at this stage based on their technical capability. However, the final selection should be based on a single financial parameter which should be the bidding parameter. MMRDA were of the view that evaluation of the technical proposal is required since the nature of the project proposed to be implemented needs to be assessed. It was explained that the practice followed by MMRDA in the 1st corridor of evaluating technical plans submitted by the bidders is fraught with complications and does not achieve any benefits. Any technical specifications required to be followed by the concessionaire while implementing the project should be mandated as part of the bid conditions. In any case the plan submitted by the bidder at this stage is not binding and thus has no relevance on the other hand such a evaluation introduces a high

level of subjectivity into the evaluation that could be questioned at any stage. The case of Mumbai and Delhi airports was quoted to explain the case. It was agreed that a copy of the draft guidelines for pre-qualification being prepared by GOI would be given to MMRDA for consideration.

- (g) **Technology:** MoUD and Planning Commission were of the view that bidding the concessionaire to a particular technology is not advisable. It was noted that the capital cost determined by the consultant in the DPR is based on a technology which gives a relatively high cost and it does not consider alternative technologies. It was agreed that MMRDA would request their consultants to give a detailed report on alternative technologies and work out the capital cost based on a critical analysis of the same. Further the option of selecting the technology should be left to the concessionaire.
- (h) **Coordination:** It was noted that the Mumbai metro is divided into 9 corridors with a separate SPV responsible for implementing each corridor requiring a coordination amongst the various SPVs and other organisations involved. MMRDA agreed to address this issue and present their recommendations to the Empowered Institutions.
- (i) **Project structure:** MoUD stated that the Ministry had conveyed an “In-Principle” approval for the Colaba-Mahim-Charkop corridor as proposed by MMRDA. The present corridor proposed has been carved out of two different corridors earlier proposed by them. MMRDA clarified that the proposal for Colaba-Mahim-Charkop (Line-2) was forwarded to MoUD for funding under JNNURM as project as it was not bankable. MoUD advised to first explore the possibility of implementation through BOOT/PPP route. Meanwhile, DPR for Bandra-Kurla-Mankhurd (Line-3) was also finalized, and was found not financially viable for PPP model. GOM had also desired to extend the underground section from Mahalakshmi to Mahim/Bandra which reduces the project viability further. In order to improve the financial viability of the project and to make it attractive for private investors, reconfiguration of Line-2 and Line-3 was proposed and DMRC advised to prepare a fresh DPR for fully elevated Charkop-Bandra-Mankhurd corridor and recommend implementation strategy. DMRC recommended the implementation of Charkop-Bandra-Mankhurd corridor on PPP basis considering its viability with reasonable VGF. The proposal was approved by GOM and recommended for VGF.
- (j) **Concession Agreement:** MMRDA stated that they would revert with their response on the comments made by the legal consultants of Planning Commission subsequently. Planning Commission was of the view that instead of discussing the draft CA forwarded by MMRDA and redrafting the same it would be advisable that the MCA being developed by GOI for Metro rail projects may be adopted by MMRDA for this project. It was indicated that an Inter-Ministerial Group under the Chairmanship of Secretary, Ministry of Urban Development is in the process of finalising the MCA for metro projects. MMRDA were requested to consider the MCA finalised by GOI for this project. It was noted that MMRDA would be consulted during the preparation of the MCA. In order to save time, MMRDA were requested

to proceed with pre-qualification of bidders for the above project which itself would take 2-3 months by which time, the MCA would be finalised.

6. MoUD made the following observations:

- (a) The project proposal mentions about Metro Master Plan of Mumbai. No 'In-Principle' approval for the Metro Master Plan has been accorded by this Ministry. As per the clarifications submitted by Government of Maharashtra, a comprehensive transportation study is being initiated for the entire region and no "a priori" decision has been taken to provide rail systems in the subsequent phases.
- (b) No comprehensive transport Master Plan for Mumbai and suburbs have been submitted by Government of Maharashtra. Separate proposals for roads and metros are being submitted. It is not known whether they complement each other /are creating duplicate capacity.
- (c) For any high capacity system like a Metro to be sustainable, it is required that network of feeder systems is defined at the initial stage itself. If it is not done at an early stage, it becomes impossible, at a later stage, to bring about proper integration and creates a fair accompli for resorting to high cost solutions.
- (d) The Metros can be taken up under State level legislation as per the decision of the Government of India only when they are confined to one municipal area. Beyond a municipal area, it gets covered under the definition of "Railways" as per Article 366, 20 (a) of the Constitution of India and hence become an Union subject. As such State Government should clarify that the proposal is limited to one municipal area.
- (e) While authorizing the State Governments for taking up Metros under State legislation, the Government had directed that : (i) fool proof safety system must be ensured and (ii) Safety certification should be done by Commissioner of Railway Safety. As such the role of regulator for laying down technical specifications, schedule of dimensions etc. as well as Safety Certification shall have to be done by Central authority and not by State authority. The concession agreement mentions only about a Commissioner nominated by State for Safety Certification and independent Engineer for laying down of standards, nominated again by the State Government. These clauses will have to be appropriately modified.
- (f) The concession agreement does not mention about benchmarking of service outputs. This is essential for ensuring the desired quality of services.

7. MMRDA was requested to indicate their response to the above issues raised by MoUD.

8. The Empowered Institution granted "in principle" approval to MMRDA to proceed with the pre-qualification of bidders for the Project subject to the following conditions:

- (a) MMRDA will adopt the MCA for Metro rail projects to be issued by GOI shortly
- (b) MMRDA will adopt the bidding process recommended by the Empowered Institution
- (c) MMRDA would finalise the capital cost after obtaining options of alternate technologies examined and recommended by the Consultant.

(C) Tripartite Agreement under the Viability Gap Funding Scheme:

8. The Empowered Institution decided that the draft finalised in consultation with Planning Commission would be circulated to some of the Project Authorities to ascertain their views before being submitted to the Empowered Committee for final approval.

The meeting ended with thanks to the Chair.