

F. No. 3/10/2016-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

New Delhi, the September 09, 2016

OFFICE MEMORANDUM

Sub: Record of Discussions of the 73rd meeting of Empowered Institution (EI) for the Scheme for Financial Support to Public Private Partnerships in Infrastructure (Viability Gap Funding Scheme) – circulation of Record of Discussions reg.

Please find enclosed the Record of Discussions of the 73rd Meeting of the Empowered Institution (EI) for the Scheme for Financial Support to Public Private Partnerships in Infrastructure (Viability Gap Funding Scheme) held on September 01, 2016 chaired by Additional Secretary, Department of Economic Affairs for information and necessary action.

Encl: As above


(Abhilasha Mahapatra)
Director (PPP)

1. **Shri Vivek Joshi, Joint Secretary, Department of Expenditure, North Block, New Delhi**
2. **Shri Praveen Mehto, Advisor (PPP, PAMD), NITI Aayog, Yojana Bhawan, New Delhi.**
3. **Shri Suresh Kumar Vashishth, Joint Secretary (Storage), Department of Food & Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution, Krishi Bhawan, New Delhi: 110 001**
4. **Shri Abhishek Singh, Executive Director (IT/Silos), Food Corporation of India, 16-20, Barakhamba Lane, New Delhi**

Copy to:

1. Sr. PPS to Additional Secretary (Investment)
2. PS to JS (Infra)
3. PS to Director (PPP)
4. www.pppinindia.gov.in

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

73rd Meeting on September 01, 2016

Record Note of Discussions

The seventy third (73rd) meeting of the Empowered Institution (EI), chaired by Addl. Secretary (Investment) was held on September 01, 2016. The list of participants is attached.

The EI noted that Department of Food & Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution, Government of India (GoI) has forwarded a proposal for **"Development of Food grain Silos at Kaimur and Buxar, Bihar on Design, Build, Finance, Operate and Transfer (DBFOT) basis through PPP mode"** seeking in-principle approval of viability gap funding (VGF) under the Government of India's Scheme for Financial Support to Public Private Partnerships in Infrastructure (VGF Scheme).

The EI noted that the Scheme for Support to PPPs in Infrastructure prescribes that VGF up to Rs. 100 crore for each project may be sanctioned by the Empowered Institution (EI), proposals for VGF up to Rs. 200 crore may be sanctioned by the Empowered Committee (EC), and amounts exceeding Rs. 200 crore may be sanctioned by the EC, with the approval of the Finance Minister.

Agenda: Proposal from Department of Food & Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution, Government of India (GoI), for grant of in-principle approval of VGF under the GoI's VGF Scheme for Development of Food grain Silos at Kaimur and Buxar, Bihar on Design, Build, Finance, Operate and Transfer (DBFOT) basis through PPP mode.

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Design capacity: 50,000 MT at each location, 3 wheat silos of 12,500 MT capacity and 4 rice silos of 3125 MT capacity; Total Project Cost: Rs. 65.28 crore (both location); Concession Period: 31.5 years including construction period of 1.50 years

VGF: upto 20% of TPC (Rs.13.056 crore) from Government of India (GoI).

Major development works/ structures: Storage silos; Grain Intake system; Pre-storage Silos; Process Tower; 100% aeration floor and chiller; Material handling system; Fumigation system; Bagging system; Bag storage Warehouse; other Associated infrastructure like Administration office; Laboratory for quality testing of Food Grains; Unloading station for receiving the bags for bulking or bulk trolleys; Truck parking area: sufficient to allow for parking of 50 Vehicles; Lorry Weighbridge: 2 numbers electronic weighbridge of weighing capacity 60 MT; Electrical substation; Pump house and work shop; Firefighting system and Rain water harvesting

2. Joint Secretary, Infra informed the EI that Department of Food & Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution (DoF&PD) has sent a proposal for in-principle approval of VGF support for the project for development of foodgrain silos at Kaimur and Buxar, Bihar on Design, Build, Finance, Operate and Transfer (DBFOT) basis. Clarifications to the appraisal of DEA and Niti Aayog have been sent by FCI. Executive Director, Food Corporation of India (FCI) presented the proposal and informed the EI that a High Level Committee (HLC) constituted by GoI had recommended development of modern and scientific storage infrastructure for food grains under PPP mode. In pursuance of this objective, Department of Food & Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution (DoF&PD) has decided to create substantial storage capacity through construction of modern silos across the country; Food Corporation of India (FCI) is the implementing agency for these projects. The project for consideration at the meeting is one of the projects being taken up under this initiative, wherein it was decided that DoF&PD, FCI and DEA would develop a framework for construction of silos on PPP basis through the VGF route. This project is also a pilot project initiative developed with DEA's support.

3. The Chair, at the outset, inquired into the difference between the Foodgrain silo projects of MP Warehousing & Logistics Corporation and FCI which were earlier approved for VGF support by the Empowered Institution (EI). Joint Secretary (Infra) informed the EI that the current proposal, being developed under DEA's Pilot Project initiative, unlike the MP silos, this is based upon an origin-destination model, where the production sector is pre-identified and linked to the distribution center. Further, it involves storage of rice in addition to wheat and also requires that the Bidder/Concessionaire identify and procure the land parcels for the Project. The

model proposed here would cater to development and provision of storage facilities in those areas where FCI presently has no land. The land for the project to be identified in the two districts (origin-destination) of Bihar is to be transferred to the Authority at prevailing Circle rates within 120 days from the date of signing of Concession Agreement. Executive Director, FCI stated that this would be first of its kind project for FCI, i.e., 3 wheat silos of 12,500 MT capacity and 4 rice silos of 3125 MT capacity. The Chair inquired whether the land cost payable to the Concessionaire is factored into the total project cost (TPC). Executive Director, FCI stated that land cost is not a part of the TPC. He also clarified that the consideration for the land, to be made as a one-time payment at the time of transfer of land, will be borne by FCI entirely.

Chair requested EI members to discuss the issues pending for clarification.

4. Dy. Secretary (Expenditure) inquired on the reason for flexibility of design given to the Concessionaire for the proposed silos. Executive Director, FCI stated that in DBFOT projects, the flexibility of design including on technology and construction vests with the Concessionaire, the Concessionaire shall be obliged to meet the minimum development obligation i.e. design capacity of 1,00,000 MT silos with a life span of 30 years along with provision of storage of rice. Unlike EPC projects which focus on construction specifications, in PPP projects the technical parameters proposed in the Draft Concession Agreement (DCA) are based on output specifications as these have a direct bearing on preserving the quality of foodgrains stored in the facility. While the core requirements of design, construction, operation and maintenance of the storage facility have been specified, enough flexibility is left to the Concessionaire to innovate and add value and bring in techno-economic and operational efficiencies.

5. Dy. Secretary (Expenditure) also inquired whether provisions have been made for disaster mitigation measures and arbitration mechanism. Executive Director, FCI confirmed that the project DCA contains the requisite provisions for dealing with disaster mitigation measures and arbitration mechanism (Clause 39.3 of DCA). The provision incorporates best practices to enable a fair and transparent framework for private participation.

6. Advisor, NITI Aayog stated that a Model Concession Agreement (MCA) for "Storage of Foodgrains" had been finalized by an Inter-Ministerial Group (IMG) headed by Secretary (Food) and approved by the then Minister, Consumer Affairs, Food and Public Distribution for awarding Silo Projects under PPP mode. It is not clear whether that MCA, finalized by the IMG, has been referred to in the current



case. Executive Director, FCI stated that the current DCA was prepared in consultation with DEA PPP Cell. Director (PPP) clarified that the project DCA is based on the MCA approved by IMG for Storage of Food grains (IMG-MCA) with project-specific changes. The DCA was drafted keeping in mind the requirements of the project and also, the Storage Agreements for projects of the MP Warehousing & Logistics Corporation and FCI for development of Foodgrain Silos, approved by the EI for VGF support under the Scheme (49th EI held on 03.10.2013 for MP Warehousing & Logistics Corporation and 68th & 69th EI Meetings held on 3.11.2015 and 22.12.2015 for FCI silo projects).

7. Advisor, NITI Aayog while supporting the project, referred to some discrepancies in the project DCA from the IMG-MCA, viz, Conditions Precedent, Damages for Delay by Authority, Representations and Warranties of the Concessionaire, Performance Security, Site related aspects, Storage and Handling Charges and Third party storage of the proposed facilities.

- a) Conditions Precedent (CPs): Advisor, NITI Aayog stated that the timelines for fulfilment of CPs by the Authority and the Concessionaire as provided in the project DCA are different from those provided for in the IMG-MCA. The DCA also does not provide for the Authority to have the right to terminate the contract in case of failure of the Concessionaire to fulfil the CPs by a certain date. In addition, provisions for “deemed termination” of the Concession upon failure of the parties to achieve the Appointed Date within a period of 180 days (or extended period) as envisaged under the IMG-MCA have been deleted. Executive Director, FCI stated that unlike other silo projects, the procurement of RoW and Applicable permits for this initiative vest with the Concessionaire, accordingly, timelines for fulfilment of CPs have been amended as the time required for identification, procurement and transfer of land is within 120 days from the date of Concession Agreement. Further, as Project Authority, FCI does not envisage any delay in fulfilment of CPs. Accordingly, project-specific changes have been made in the project DCA. It was agreed that the provisions in the DCA are based on project-specific requirements, hence no change is required.
- b) Damages for delay by the Concessionaire: Advisor, NITI Aayog pointed out that the amount of damages payable by the Concessionaire in case of failure to fulfil the CPs, as per the IMG-MCA document is 0.3% of Performance Security for each day’s delay, whereas this amount has been changed to 0.2% of the Performance Security for each day’s delay. Executive Director, FCI stated that these are project-specific changes; the damages payable in case of



non-fulfilment of CPs within the prescribed period have been estimated based on the TPC, i.e., combined cost of both the silos and the overall impact remains the same. The EI agreed to retain the modified provision as provided in the DCA.

- c) Representations and Warranties of the Concessionaire: Advisor, NITI Aayog stated that the clause related to change in Ownership, Clause 7.1(k) provides that the Selected Bidder/ Lead Member/Consortium Member together with its Associates hold not less than 51% of its issued and paid up equity as on date of the Agreement. This is in deviation from the IMG-MCA which provides that Selected Bidder/ Lead Member/Consortium Member together with Associates hold not less than 33% of issued and paid up Equity as on the date of this Agreement, and the Consortium members whose Technical and Financial capacity was evaluated for pre-qualification hold at least 26% of such Equity during the Construction Period, which shall also be no less than 5% of the Total Project Cost. Joint Secretary (Infra) explained that once shareholding of original promoters fall below 50% of the equity, effective control passes to the majority shareholder and insisting that 33% or 26% be retained by the original promoters is not relevant. The original promoter in the role of a minority shareholder cannot provide special comfort to FCI. In any case, performance can only be sought from the Concessionaire, as per the terms specified under the Concession. This issue had also been part of the B.K Chaturvedi recommendations for the Road sector and are being applied across all sectors. Advisor, NITI Aayog stated that the provision of 33% may be retained. Executive Director, FCI agreed to make necessary corrections in the project documents.

(Action: FCI)

- d) Performance Security: Advisor, NITI Aayog pointed out that the provisions with regard to release of the performance security upon expiry of one year or upon the Concessionaire expending 40% of the TPC have been amended to extend the validity of the Performance Security for a period of 180 days after expiry/termination of the concession agreement. He stated that normally in PPP projects, reduction in the validity of the Performance Security (while is replaced by another security) leads to lower costs to the bidders and subsequently better bids for the Authority. Similarly, a substitute Performance Security for a like amount is "deemed" to be created for performance of the obligations by the Concessionaire during the Operation Period. Executive Director, FCI stated that instead of creating a Deemed Performance Security, it has been proposed to retain the original Performance

Security till the expiry/termination of the Agreement as the amount of Security is small in case of Silo projects. However, ED, FCI agreed to retain the provision of Deemed Performance Security as given in the IMG-MCA.

(Action: FCI)

- e) Site and Related Aspects: Advisor, NITI Aayog pointed out that Clause 10.2.1 (f) of the DCA related to identification, procurement and transfer of land parcels for the Project is aligned with the provision under the draft RFP. Executive Director, FCI submitted that it shall be ensured that all bid documents are aligned.

(Action: FCI)

- f) Storage and Handling Charges: Advisor, NITI Aayog pointed out that the formula for finalisation of monthly Fixed Storage Charge and indexation for future payments of Fixed storage charges payable to the Concessionaire by the Authority as given in the IMG-MCA has not been followed. The current formula freezes the rates as per 2014-15, which may be much higher than actual rate payable in Bid award year, implying that the Authority will be locked into paying a higher rate than actually due. Executive Director, FCI clarified that the Fixed Storage Charge of Rs. 66.04 per MT per month will not be changed/indexed till COD. He explained that the charges have been fixed keeping in mind the principle that if COD occurs in Accounting Year 2018-19, the Fixed Storage Charge of Rs. 66.04 would be payable for Accounting Year 2018-19, for the second accounting year from COD (FY 2019-20), the total variation in the price index shall be taken into account from the base index year (2012-13) for which the base Fixed Storage Charge are Rs. 57.50 per MT per month, duly factoring the annual escalation over the years as per the Price Index. For the subsequent years, the Fixed Storage Charge shall be revised annually in accordance with the provisions under Article 25 (Storage and Handling Charges). The said benefit or indexation during the period of construction will be available for only a maximum of One and Half years (540 days) from the Appointed Date, and rates arrived at for the scheduled COD will be frozen till actual COD and for subsequent years only annual revision is admissible from the rate frozen on the scheduled COD. It was further confirmed that the same formula had been used while fixing the Storage Charges of the Silos developed by FCI and duly approved by EI. It was agreed that the provision would be retained as proposed in the in the DCA.

g) Third party storage: Advisor, NITI Aayog inquired if the Authority should specify upfront the mechanism for deciding on de-reservation of Storage capacity and third party usage of storage capacity to enable clarity in the process. Executive Director, FCI stated the proposed storage capacity is deemed to be earmarked and reserved for exclusive utilization by the Authority only, and the Concessionaire shall be entitled to receive payment of Fixed Storage Charges throughout the Concession Period. However, a provision exists under Clause 3.2 of DCA for de-reservation and use of facility by a third party for un-utilized capacity of the proposed silos.

8. Director (PPP) pointed out that since there are changes that will have to be carried out in the DCA, legal vetting of the documents may be carried out before circulation of the finalized bid documents. Executive Director, FCI agreed to submit the certificate of legal vetting.

(Action: FCI)

9. All Members of EI were in agreement to grant in-principle approval of VGF support for the project.

10. **The EI granted in-principle approval of VGF support, as per the VGF Scheme, to the proposal for Development of Food grain Silos on DBFOT basis under PPP mode at Kaimur and Buxar (Bihar) with Total Project Cost (TPC) of Rs 65.28 crores, subject to fulfilment of the following conditions:**

- a. FCI shall undertake corrections in the project DCA based on discussions as at paras 5, 6, 7, and 8 above, as agreed to by FCI.
- b. FCI shall ensure that the legal vetting of the revised documents is undertaken to ensure that there are no discrepancies in the contract documents.
- c. FCI shall obtain prior approval of the EI on any change in TPC, scope of work or project configuration as noted above.
- d. FCI shall intimate and obtain prior approval of the EI on any change in VGF requirements as per the Scheme and Guidelines for financial support to PPP in infrastructure along with justification, which is based on competitive bidding as per the VGF Scheme
- e. FCI shall circulate the final documents to the members of the EI for record.

(Action: FCI)

11. The meeting ended with a Vote of Thanks to the Chair.



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Empowered Institution for the
Scheme to Support Public Private Partnerships in Infrastructure
73rd Meeting on September 01, 2016

List of Participants

- I. Department of Economic Affairs
1. Shri Ajay Tyagi, Additional Secretary (Investment) - In Chair
 2. Ms. Sharmila Chavaly, Joint Secretary(Infra)
 3. Ms. Abhilasha Mahapatra, Director(PPP)
 4. Shri. Rajesh Gupta, SO(PPP)
- II. Department of Expenditure
5. Shri Sitangshu Chakraborty, Dy. Secy.
- III. NITI AAYOG
6. Shri Praveen Mahto, Advisor
- IV. Department of Food & Public Distribution
7. Shri Suresh Kumar Vashishth, Joint Secretary (Storage)
- V. Food Corporation of India
8. Shri Abhishek Singh, ED (Silos)
 9. Shri Assem Chhabra, General Manager (Silos)
 10. Shri R.N. Bhargava, Advisor

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