

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

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

12th Meeting on July 29, 2010

Record Note of Discussions

The twelfth meeting of the Empowered Committee (EC), chaired by the Finance Secretary, was held on July 29, 2010 to revalidate the 'in principle' approval for VGF support for Hyderabad Metro Rail Project on DBFOT (Toll) basis. The list of participants is annexed.

2. The Chairman noted that the bid process for selection of the private sector entities for the project had been successfully concluded and congratulated the State Government, Ministry of Urban Development (MoUD) and Planning Commission in taking forward the project.

3. Joint Secretary, DEA presented the proposal. It was noted that Government of Andhra Pradesh (GoAP) had sought approval for VGF support for development of the three links of Hyderabad Metro Rail (HMR). The final length of the metro system was 71.16 km. The proposal was granted 'in principle' approval for VGF support of upto Rs.2,362.88 crore (i.e. 20 percent of the Total Project Cost (TPC) of Rs.11,814 crore), with the approval of the Finance Minister. On completion of the bid process, the project had not required VGF support since the lowest bidder offered payments (negative grant) for the project amounting to approximately 10 percent of TPC. However, the Concessionaire failed to fulfil the contractual obligations and achieving financial closure within the stipulated time and the agreement was terminated. Accordingly, the State Government commenced on the second round of bidding and sought extension of validity of the 'in principle' approval in July, 2009. The extension was granted with the caveat that in case changes are made in the approved project documents, prior approval of EI would be obtained. The State Government sought approval for the revised project documents in February, 2010; the documents were further revised in May, 2010. The Empowered Institution (EI) considered the proposal on July 8, 2010 and approved the revised project document while recommending some modifications. While the matter should have abated there, few letters were subsequently received from Planning Commission with respect to the decision of the EI on the project along with a supplementary appraisal

note. Joint Secretary, DEA emphasised that while the EI is authorised to appraise and approve the project documents and while the EC is not an appellate forum to review the decision of the EI, the meeting of the EC had been convened to revalidate the 'in principle' approval for VGF upto 20 per cent of the TPC and to dispose off letters from Planning Commission since the instant project is a prestigious project of the country. Thereafter, there should not be any lingering doubts about the integrity of the appraisal process and the rationality of the decision of the EI. EC may take a view on whether further revalidation of 'in principle' approval by FM was required.

4. The Chairman observed that a response would be sent to the letters received from Planning Commission and noted that it was assumed that the communication had been sent with prior approval of Member Secretary, Planning Commission. Member Secretary, Planning Commission indicated that she had not seen the communications earlier. Adviser to Deputy Chairman, Planning Commission informed that the letters conveyed the views of Planning Commission, as earlier approved by the Deputy Chairman; and no new aspect had been communicated.

5. Managing Director, Hyderabad Metro Rail (HMR) made a presentation on the project. It was indicated that the rapid growth of Hyderabad Urban Authority had resulted in exponential increase in motorised traffic, environmental concerns and underlined the necessity of a comprehensive and integrated traffic solution. Accordingly, three lines of HMR with 66 stations were proposed totalling to 71.16 km which provided integration with existing rail terminals, MMTS stations and bus depots. The HMR, in the first phase, was envisaged as an elevated system with an average speed of 34 kmph and a maximum speed of 80 kmph. The frequency of metro train was expected to be between 3-5 minutes. It was envisaged that by 2014, the system would carry 1.5 million passengers per day and 2.2 million by 2014. The bid process followed for the second round of bidding in the project was explained. The decision to rebid was taken by GoAP on July 14, 2009. The State Government sought extension of validity of the VGF on July 30, 2009 and the approval thereon was communicated by GoI on August 10, 2009. The TPC of the project had remained the same as earlier and there was no change in the VGF support from GoI. The concession period was 35 years which is extendable by a further 25 years on fulfilment of the prescribed conditions and performance criteria. The Concessionaire would be allowed to exploit air space over 269 acres of the rail facility, though the land ownership would remain with the State Government. The rentals of more than 11 months would require prior Government approval. The project IRR was 13.07 percent with IRR for the rail system being 10.17 percent and IRR for the real estate component being 17.27 percent.

6. Managing Director, HMR informed that the financial bids had been opened on July 14, 2010. The bids were filed by the three of the six pre-qualified bidders. All

the three bidders had sought grant. The lowest grant had been sought by L&T Limited, which was around 12 percent of TPC.

7. Secretary, MoUD indicated that the Department had been associated with the project from the very beginning. It was a matter of satisfaction that the bid process for the project had concluded with a successful outcome.

8. Adviser to Deputy Chairman, Planning Commission made a presentation on the project and the views of Secretariat for Infrastructure, Planning Commission (SFIPC) on the approval process by the EI:

8.1 **Time taken in the approval process:** The State Government had sought extension of validity of VGF support from the Government in February 2010. The meeting of the EI was held after 5 months on July 8, 2010, three days before the bid date of July 14.

8.2 **The approval process:** The competent authority for approval are EC and FM; the changes made by EI in the important parameters approved earlier. Only two days were available with the bidders to examine these changes before bidding for the project.

8.3 **Increase in Project Finance/VGF:** The initial project structure allowed the Concessionaire to lease real estate after 3 years. Since the project completion period is 5 years, the project could be part financed by real estate. This provision was changed by the EI to allow real estate to be leased after project completion (CoD). Hence, the Concessionaire would be required to raise more project finance, and result in higher VGF for the project. It was indicated that the change was on account of the decision of the CoS for metro projects in the country. However, the decision is yet to be ratified by the Cabinet. Hence, the earlier project structure, which was approved by FM should not have been altered.

8.4 **Safety Certification:** Since the Metro project is governed by State law, insisting that the Commissioner of Railway Safety should certify the safety of the metro rail system in Hyderabad violated the federal principle and was open to challenge on constitutional validity. Hence, advice of the Ministry of Law and the Attorney General should be obtained on the matter.

8.5 **Reforms:** The EI's condition that GoAP should carry out reforms mandated by MoUD was unusual and unprecedented since the disbursal of VGF to a private entity cannot be curtailed in the event of non compliance to the reforms by the State Government.

8.6 **Bid evaluation:** The advice of EI that a representative of GoI should be a nominee in the bid evaluation was an unusual and intrusive conditionality.

8.7 **The way ahead:** The extension of validity for VGF support may be approved; however the provisions of safety certification may be settled in consultation

with the Attorney General/Law Ministry and the conditionalities regarding reforms and participation in the bid evaluation may not be allowed.

8.8 **Scrutiny:** The EC may consider scrutiny of the process observed to avoid its recurrence.

9. Joint Secretary, DEA observed that the issues raised by SFIPC could be categorised as process and substance issues. The facts with respect to each of these issues were presented:

Process issues

9.1 **Time taken in the approval process:** The proposal for extension of validity of the in principle approval for VGF support was received from the State Government in July, 2008 and the extension was conveyed within a span of 10 days. However, the State Government was advised that in case changes were envisaged in the bid documents, prior approval of the EI may be obtained. The revised documents were received from the State Government on February 22, 2010. The appraisal of Planning Commission was received on May 18 on the documents further revised by the State Government. These second revised documents were received from the State Government subsequently. Further the RfP, which was earlier issued by the State Government, was modified vide addendum issued to the shortlisted bidders on May 18, 2010. The meeting of EI was scheduled for June 04, 2010. However, request was received from MoUD for re-scheduling the meeting since more time was required for examination of the second revised proposal from HMR. The appraisal from MoUD was received in the last week of June and the meeting was convened on the July 8, 2010. Hence, as against four weeks allowed, Planning Commission's appraisal took 3 months. Other members of the EI took four to six weeks to examine the second revised project documents. Appraisal note was not sent to the EI, despite request to the effect. This was the third instance of such bilateral discussions where the EI was not associated or informed and approval of EI was taken for granted. Hence, Planning Commission may like to examine why three months were taken for appraising the project or why the EI was not kept informed of the changes being recommended to the approved documents by Planning Commission directly to the project authorities.

9.2 **The approval process:** The observation that large scale changes were made close to the bid due date was contested. The deliberative process led to the meeting of the EI being convened on July 8, 2010. Change in the bid due date is the prerogative of the project sponsor. The bid due date had undergone a change after HMR issued the addendum with changes recommended by Planning Commission. Since approval of EI was not sought for issue of RFP or the earlier Addendum, there was no case for the EI to advise the State Government regarding the bid due date or its extension.

Substance issues

- 9.3 **Possible increase in VGF due to linking property development with the COD:** The CoS, in its meeting to deliberate on issues concerning the execution of metro projects in the country, held on July 14, 2009, had decided that a metro project is first a transport project, hence, the property development component may be linked to the completion of the transport project. While the Cabinet is yet to approve the Metro Policy as a whole, a cardinal principal of governance is that decisions taken in higher fora are respected and applicable for subsequent decision points. Further, the same principle had also been utilised while granting approval to the VGF support for Mumbai Metro Line II by EI, EC and FM.
- 9.4 **Focus on property development:** The consistent view of MoUD has been that extensive use of real estate for projects should be discouraged; in a separate proposal of MoUD regarding development of housing units in Kidwai Nagar, New Delhi, the same view was reiterated by MoUD and concurred by CoS. Thus, there is broad approval of the Government that there should not be excessive focus on property development to finance urban sector projects.
- 9.5 **Safety Certification:** The decision that all metros in the country should be covered by over-arching Central legislation and safety certification by the Commission of Railway Safety was the decision of the CoS. The same provision was also applicable while approving VGF for Mumbai Metro Line II. Both the State Governments had agreed to the said provision and were agreeable with making necessary changes in the State legislations to allow for the provision. Since the project sponsor was agreeable with the change, no change was warranted in the decision of the EI.
- 9.6 **Reforms:** The reforms advised by MoUD were being implemented in all cities where metros were being developed with central government support. Hence, the same were also advised to the State Government, who had agreed to implement them. Therefore, there was no intent to stop or delay the disbursement of VGF to the private sector through the said condition, but to reinforce the significance attached to the proposed initiatives by the Government. Further, the State Government had also indicated their willingness to undertake the said reforms.
- 9.7 **Bid evaluation:** The Government was providing a considerable amount of resources as support for the project. Hence, the advice that a representative of the Government should be associated with the bid evaluation process, as advised by MoUD, was not aimed at being intrusive.
- 9.8 **Decisions of the EI:** Thus, the decisions of the EI were not arbitrary but based on the decisions of CoS in a related context or the decisions of the EI, EC and FM in respect of approval of VGF for Mumbai Metro Line II, a

project which was considered by the EI and EC subsequent to the grant of in-principle approval to the HMR project.

9.9 **Tenor of the communications:** The language used in the communications from SFIPC was unlike any witnessed in inter-ministerial discourse and against canons of propriety. Since the Member-Secretary, Planning Commission, who is the member of the EC, had, at the commencement of the meeting indicated lack of awareness about the communications, it could be inferred that they had not been sent with the approval of the competent authority.

10. Officer on Special Duty, MoUD responded to the observations made by Adviser to Deputy Chairman, Planning Commission:

10.1 The reforms indicated are being implemented by all the cities where metros are being developed with the approval of the Government of India. Hence, MoUD had suggested that these may also be incorporated in respect of the HMR project.

10.2 Ministry of Civil Aviation (MoCA) had sought advice on the constitutional validity of a centralised safety certification of metro railways. The Attorney General had held that a centralised Safety Commissioner may be allowed for all metro projects in the country.

10.3 The comments on the DCA of the HMR had been made with the approval of Minister, Urban Development; the comments were based on the experience of MoUD in developing metro projects in the country and the decision of the EC on the project of Mumbai Metro Line II.

11. Member Secretary, Planning Commission noted that the Adviser to Deputy Chairman, Planning Commission had alleged that the decision of the EI to link encumbrances to the CoD would result in higher outflow of resources from the Government exchequer. These observations required to be settled so that there are no outstanding doubts on the process and its outcomes.

12. The Chairman summarised the discussion and the decisions:

12.1 The EC endorsed the recommendations of the EI on revalidation of the 'in principle' approval for VGF support for HMR project.

12.2 The EC complimented the efforts of the State Government to develop the programme on PPP basis and successfully conclude the process of selection of the private entity for implementing the project.

12.3 The DEA would bring the communications from Planning Commission to the notice of the Finance Minister and respond to the observations therein.

12.4 With reference to process of Inter Ministerial participation, Member Secretary, Planning Commission, who is the member on the Inter Ministerial

Committees, may consider institutionalising of the process of participation in the deliberations.

- 12.5 Since, ordinarily, the communications from Planning Commission, addressed to the Finance Secretary are assumed to have been issued with the approval of the Deputy Chairman or the Member Secretary, Member Secretary, Planning Commission may consider institutionalising the process.
 - 12.6 The substance and tenor of communications from Planning Commission seem to suggest miscarriage of the process of appraisal which would result in higher requirement of VGF from Government of India. Since property development is being utilised in the instant project to reduce the quantum of VGF, it is but expected that change in the provisions of property development would result in higher VGF requirement. However, the views of the CoS had been that the transport project should be developed first before the property development component. The same principle was upheld by the EI while considering the documents of the HMR project.
 - 12.7 The EC also concurred with the view of the CoS that since the objective of the Government is the delivery of the transport project, property development should be linked to CoD so that the focus of the private sector entity does not shift to the early delivery/gains from the property development component of the project. While conceptually this will result in higher VGF, this was acceptable as per the requirement of speedy delivery of the core PPP project. Since this decision had been taken in a conscious manner before the completion of the bid process, further enquiry into its objectives was not necessary.
 - 12.8 Safety of the users was of critical import; hence, the EC endorsed the view for centralised safety certification. Since the State Government was agreeable with making necessary amendments to allow Commissioner of Railway Safety to certify for HMR project, further consideration by EC was not necessary.
 - 12.9 The reforms advised by MoUD were aimed at motivating the State Governments to enable healthy flow of investments in the urban transport sector. However, release of VGF would not be subject to their fulfilment.
 - 12.10 Better harmony in the language of communication and process of appraisal may be ensured.
13. The meeting ended with a vote of thanks to the Chair.