

**Government of India  
Ministry of Finance  
Department of Economic Affairs**

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

**Fifth Meeting on January 20, 2009**

**Record Note of Discussions**

The fifth meeting of the Empowered Committee (EC), chaired by Secretary, Economic Affairs was held on January 20, 2009 in North Block, New Delhi. The list of participants is annexed.

2. It was noted that the Empowered Committee would consider the proposal from Government of Maharashtra for amendments in the project documents in respect of Mumbai Metro Rail Project – Corridor II (Charkop-Bandra-Mankhurd) which has been granted 'in-principle approval' for Viability Gap Funding. Further, the Empowered Committee would also consider observations of Planning Commission in respect of the draft Concession Agreement (DCA), received subsequent to the project being recommended by Empowered Committee to Finance Minister.

3. The Empowered Committee noted that Mumbai Metropolitan Region Development Authority (MMRDA) had forwarded the proposal seeking Viability Gap Funding (VGF) assistance for the implementation of the Mumbai Metro Rail project-Corridor II (Charkop-Bandra-Mankhurd) in November 2006. The Empowered Institution (EI), in its 8th meeting held on January 22, 2007, accorded 'in principle' approval to Government of Maharashtra to proceed with pre-qualification of bidders. The EI, in its 11th meeting held on September 12, 2007, reviewed the status of the proposal and noted that GoM had proceeded with pre-qualification of bidders. Since the MCA for metro projects had not been finalised, EI advised MMRDA, pending finalisation of MCA, to finalise the project documents in consultation with Ministry of Urban Development (MoUD). MMRDA submitted the revised proposal along with Draft Concession Agreement and other project documents for grant of in-principle approval and permission to proceed ahead with the invitation of financial bids. The EI, in its 15th meeting held on August 5, 2008 recommended the proposal for in-principle approval. The Empowered Committee (EC) considered the proposal in its 4th meeting held on August 25, 2008 and after

extensive deliberations, centring primarily on concerns of representative of Planning Commission, recommended the project to Finance Minister for approval of viability gap funding support of Rs 1532 crore. The Finance Minister, after review of the issues and examination of concerns expressed by Planning Commission, granted in-principle approval for VGF support to the project. After the issue of RfP documents to all short listed bidders by MMRDA, the pre-bid meeting was held on 5.11.2008. Based on the consultations with the short-listed bidders, MMRDA proposed to amend some of the clauses in the project document where the suggestion made by the bidders were considered reasonable, practicable and more equitable, but which did not alter the core of the concession agreement.

4. Adviser to Deputy Chairman, Planning Commission pointed out that the agenda note for the meeting indicated that the Empowered Committee would consider observations by Planning Commission in respect of the clauses in the project agreement which could result in similar contingent liabilities as were experienced in Dabhol power plant. It was stated that reference to the Dabhol power project should be construed in the larger context of legal infirmities or inconsistencies in the project agreements resulting in disputes and consequent arbitration cases. Hence, Planning Commission had forwarded its observations after examination of the project documents in a holistic manner.

5. The representative of DEA informed that over 40 amendments to various clauses had been suggested by Planning Commission for incorporation in the project documents. With the approval of the Chair, it was decided to first examine the key observations of Planning Commission in respect of the project DCA.

6. The representative of MMRDA pointed that the State Government had forwarded the proposal for support in 2006. Further, since 2006, the State Government had been associated with discussions on the MCA for metro projects, which had been reviewed, even at the level of Chief Secretary, Maharashtra, and amended six times. The project document was based on the MCA, thus prepared, with project specific changes. It was pointed out that the project had already been granted approval by the Empowered Committee and the Request for Proposal invited from the short-listed bidders for the project. Hence, widespread changes to the project document should not be deliberated upon at this stage. The Chairman of Empowered Committee noted that the State Government, after examination of the project documents, had considered it necessary to propose amendments to the project documents. Similarly, correspondences had also been received from Planning Commission that certain provisions in the project documents required a review. Accordingly, a view had been taken to consider all the proposed changes before approving the revised documents in respect of the project.

7. The Empowered Committee considered the key observations by Planning Commission on the project documents. After deliberations, the following were decided:

7.1 **Clause 5.1.5(b) - Provision of uninterrupted power supply:** It was noted that the clause was proposed to be amended by MMRDA to provide for “supply of dedicated and reliable power to the rail system and have appropriate back up in place at all transit facilities at times of power outages and failures.” It was also noted that it was proposed by MMRDA to incorporate a new clause 6.1.2 (g) to procure the requisite priority for supply of electricity for the Rail system on applicable commercial tariff. The proposed change was accepted subject to elaboration of the transit facility by MMRDA and suitable incorporation of the clarification in the clause 5.1.5 (b) that “for avoidance of doubt, this does not include traction power supply”.

7.2 **Article 5 – Encumbrances over project assets:** Planning Commission has observed that Article 5 or any other provision in the DCA did not regulate the concessionaire’s ability to create encumbrances over the project asset forming part of real estate development. The Planning Commission was of the view that it may be prescribed that no encumbrances are created on any project asset forming part of real estate development prior to the third anniversary of the appointed date. The representative of MoUD pointed out that since the construction period is five years, therefore, suggesting a period of three years for encumbrances on project assets would not serve the desired purpose of ensuring that development of the rail system precedes property development. It would be better to link the same to the commercial operation date of the project. It was decided that it may be specified in the project DCA that no encumbrances would be created on any project asset forming part of real estate development prior to the COD.

7.3 **Clause 5.4.2 – Issues related to golden share of the Government:** The EC noted that Planning Commission, in their observations on the project DCA, had suggested that the sub-articles (p) to (t) of Article 5.4.2 appeared to bestow intrusive powers to the Sponsoring Authority that will allow it to veto day to day business decisions. It was noted that MMRDA in the revised DCA had proposed to omit sub-clause (p)-regarding rights attached with respect to any adoption or change of the dividends or distribution policy, or accounting principle or policy - in the document, while retaining the other sub-articles (q) to (t). It was decided that the deletion was in order and further, that sub-articles (q), (s) and (t) may also be deleted from the project DCA. Sub-article (r) – regarding matters relating to mergers, acquisition, consolidation or amalgamation with another entity - may be retained. The representative of MMRDA

suggested that the sub-article (t) –procurement of rolling stock – may also be included to ensure that the quality of rolling stock procured is not compromised. It was decided that this requirement should not be met through rights which flow from the Golden share of the Government; and may be appropriately addressed elsewhere in the DCA.

- 7.4 **Clause 5.13 – Integration with rail corridors:** It was noted that the Clause imposed obligation on the concessionaire to plan and design the rail system to cater for integration with other transportation systems including fare integration and common ticketing for the effective functioning of the system as a whole. The representative of Planning Commission suggested that such an obligation should not be made on the concessionaire. It should be provided that the concessionaire shall make best efforts for integration with other transportation system corridors in a revenue neutral manner. The representative of MoUD emphasised that operational integration was critical for seamless connectivity in the physical infrastructure, such as passenger transit, as well as fare integration. The representative of MMRDA informed that a similar clause also existed in the concession agreement for Line-1 to ensure its integration with Line-2 and other rail corridors. It was pointed out that physical integration with the future systems/lines should be ensured through uniformity in the specifications prescribed in the Manual of Specifications and Standards. It was noted that MMRDA had proposed a change in the clause to specify that the facilities will be provided through mutual agreements amongst parties involved. The formulation/ amendment to the Clause proposed by MMRDA was accepted.
- 7.5 **Clause 6.1.2 (d)- Treatment of local taxes:** It was noted that the clause provided that if the Authority is able to procure any local tax exemptions, the concessionaire shall pay the Government an equal amount in cash. It was decided that this provision may be deleted since it is also covered/ provided under clauses in respect of ‘Change in Law’.
- 7.6 **Article 18 – Safety requirements:** The representative of Planning Commission pointed that an appropriate mechanism may be established through the DCA to undertake safety audit of the rail system on a regular basis. The representative of MMRDA stated that the Commissioner of Railway Safety (CRS) would certify the safety of the rail system prior to the COD. The representative of DEA pointed out that the issue under consideration was of addressing the requirement of regular safety audit subsequent to the COD. The representative of Planning Commission further pointed that Article 18 provided appointment of CRS under applicable laws though no extant law provided for appointment of CRS for metro projects of State Governments. It was decided that the text

“under applicable laws” in the context of CRS in the clause 18.3 may be deleted.

7.7 **Clause 25.2 – Equity support and O&M support:** It was noted that the Clause 25.2.5, which provides that Government agrees to provide grant to the project as per specified guidelines, had not been used in the DCA. The representative of MMRDA pointed out that Article 25.1.1 adequately covered these concerns and that a separate clause indicating support through VGF Scheme, etc. was not necessary since the concession agreement was between GoM and the concessionaire and no organisation from GoI was party to it. It was decided that Clause 25.2.5 would be incorporated in the project DCA.

7.8 **Article 29 – Effect of variation of traffic:** It was noted that Article 29 had not been provided in the project DCA and the DCA does not deal with provision of effect of variation in traffic projections and the consequential effect on the period of concession. The representative of MoUD indicated that the Article would tantamount to traffic guarantee which was not required in the instant project. The representative of Planning Commission clarified that they were completely opposed to traffic guarantee. The said Clauses only provided for partial mitigation of the risk and a better bid response. The representative of MMRDA pointed out that the provision could be manipulated for under reporting of the traffic to avail of the consequent extension of the concession period. Hence, the State Government, after extensive internal deliberations, had decided that the Article may not be incorporated in the DCA. It was noted that the Article provided for both increase as well as decrease in the concession period based on an upside or downside in the traffic projections. It was decided that the Article may be restored in the project DCA.

**(Action: GoM/MMRDA)**

8. The representative of Planning Commission stated that the other observations from Planning Commission and their legal consultants also required close examination. It was decided that the amendments to the project DCA suggested by Planning Commission and proposed by GoM would be remitted to a group comprising representatives of DEA, Planning Commission and GoM/MMRDA for examination. The Empowered Committee would meet again on January 21, 2009 to examine the matter and approve amendments to the project documents.

**(Action: DEA; Planning Commission;  
MMRDA/GoM)**

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