

Subject: **Record Note of discussion of the meeting of Public Private Partnership Appraisal Committee held on 30.03.2007**

The ninth meeting of the Public Private Partnership Appraisal Committee (PPPAC) was held on 30.03.2007 at 12.00 Noon in Room No. 131-A. The list of participants is annexed.

2. PPPAC considered the following port sector proposals received from Department of Shipping (DOS) for “in principle” approval:

- i. Construction of Deep Draught Berth on BOT Basis to handle imported coking coal at Paradip Port.
- ii. Construction of Deep Draught Iron Ore Berth at Paradip Port on BOT basis.

3. The representative of the Planning Commission stated that despite a CoI decision dated 12.5.2005 regarding formulation of a Model Concession Agreement (MCA) by an Inter Ministerial Group under the Chairmanship of Secretary, Shipping, it is not clear how and when the MCA would finally emerge. In the absence of an MCA, the reliance on project specific concession agreements is fraught with serious difficulties. It was also stated that the current practice of using revenue share as a bidding parameter while tariff has been fixed on a ‘cost plus’ basis is simply untenable and is, therefore, not capable of enforcement.

4. The representative further stated that either the above projects may be accorded “in principle” approval with the clear understanding that bidding will be based on a duly approved MCA or the draft concession agreement for these specific proposals would be prepared by qualified and experienced legal consultants and subjected to discussions with representatives of Finance Ministry, Law Ministry and Planning Commission before proceeding further.

5. AS (Expenditure) stated that the cost of security should be factored in the project cost. DOS was of the view that as these berths are within the existing ports, security is the responsibility of the Port Authority. It was decided that the Port Authority would examine the possibility of the Concessionaire bearing the incremental cost of security.

6. Ministry of Law stated that the following:
 - (i) Concession Agreement should not provide for lease but only licence.
 - (ii) Lender should not have any other rights except in terms of replacement of the operator
 - (iii) Interest rate should be linked to SLR etc. and not fixed.

7. DOS noted these points.

8. The proposals were then discussed in detail and following decisions were taken on the issues raised by the DEA and Planning Commission:
 - (i) Hiring of consultants: DOS agreed to advise Port Authorities to appoint financial and legal consultants.
 - (ii) Bidding process: The two stage bidding process suggested would be followed.
 - (iii) Bidding Criteria/Revenue share: Tariff setting mechanism and the bidding parameters on the same line as advised by the Task Force shall be incorporated in the draft concession agreement to be finalised by the Port Authority pursuant to the in principle approval of PPPAC.
 - (iv) Statutory Clearances: The Port Authority would be responsible for obtaining the environmental and all other clearances required from the State Government. PPPAC Memo would specifically mention all the clearances required and the status thereon, actions pending and the expected time line for the clearances to be in place. The bidding document would also specifically address this particular issue. DoS will ensure this in all the future proposals submitted to PPPAC.
 - (v) Project Cost: the concession agreement would specifically state that the relevant project cost would be lowest of the project cost (a) as estimated in the bidding document (b) as per the financing document and (c) actual investment by the concessionaire.
 - (vi) Concession Agreement: The following issues relating to the concession agreement were agreed by DoS:
 - a. Standards of operation and maintenance: minimum performance parameters would be stipulated upfront in the Concession Agreement.
 - b. Penalties for default in standards: quantum of penalty would be in relation to the nature of default.

- c. Safety related provisions: safety standards would be stipulated upfront in the Concession Agreement. DOS would endeavour to formulate a Manual of Standards and Specifications in relation of port sector projects including construction, safety and other aspects.
- d. Environment related provisions: minimum environment related requirements would be stipulated upfront in the Concession Agreement.

9. On the issue of Escrow Agreement, DOS was of the view that an Escrow Account need not be stipulated for these projects and that Escrow Agreement should be with the lenders only. Instead of an Escrow, a provision for Performance Security up to the expiry of Concession Period and one year thereafter has been provided for securing revenue of the Port Trust and other obligations in the port sector projects, which has proven to be adequate. However, PPPAC decided that an Escrow account should be set up for all port sector projects including the above two projects.

10. It was decided to grant “in principle” approval to the above two projects under consideration, subject to the condition that the recommendations of PPPAC would be adopted by the Port Authorities. As MCA should form part of the documents required to be submitted for final approval of the PPPAC, the issue raised by the Planning Commission in this regard would be suitably addressed at that stage.

11. The meeting ended with thanks to the Chair.

List of Participants in the meeting of Public Private Partnership Appraisal Committee taken by Secretary (EA) on 30.03.2007 at 1200 Noon in Room No. 131-A, North Block.

- (i) Shri Ashok Jha, Finance Secretary (in Chair)
- (ii) Shri Gajendra Haldea, Adviser to Dy. Chairman, Planning Commission
- (iii) Smt. Rita Menon, Additional Secretary, Department of Expenditure
- (iv) Shri Arvind Mayaram, Joint Secretary, DEA
- (v) Shri C. Balakrishnan, AS&FA, Ministry of Shipping, Road Transport and Highways
- (vi) Shri A.K. Bhalla, JS (Ports), Department of Shipping
- (vii) Shri S.K. Saha, Director, Planning Commission
- (viii) Smt. Punya Srivastava, Deputy Secretary (PD), Department of Shipping
- (ix) Shri K.R. Reddy, Dy. Secretary, Planning Commission
- (x) Shri K. Raghuramaish, Chairman, Paradip Port Trust
- (xi) Shri S. Tripathy, Dy. Chairman, Paradip Port Trust
- (xii) Shri R. Srinivasa Kannan, Chief Engineer, Paradip Port Trust