

Ministry of Finance
Department of Economic Affairs

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Public Private Partnership Appraisal Committee (PPPAC)

11th Meeting on June 4, 2007

Record Note of Discussion

The 11th meeting of the Public Private Partnership Appraisal Committee (PPPAC) was held in North Block, New Delhi at 2.30 PM on June 4, 2007. The list of participants is annexed. The following projects were considered by the PPPAC:

- (i) Construction, Maintenance and Operation of Jalandhar – Amritsar section, Punjab on BOT (Annuity) basis
- (ii) Design, construction, development, finance, operation and maintenance of Km53/225 to 704/227 Kamptee-Kanhan and Nagpur bypass on NH-7 in the State of Maharashtra on BOT (Annuity) basis
- (iii) Widening of existing 2 lane carriage way to 4/6 lane divided carriageway configuration of Armur-Adloor Yallareddy Section on NH-7 in the State of Andhra Pradesh under NHDP Phase-II on BOT (Annuity) basis.

2. The PPPAC, discussed the issues in the Agenda Note as circulated vide DEA's O.M. No.1/5/2005-PPP, dated May 30, 2007 and decided as follows:

Sl. No.	Issues	Responses of the members of the PPPAC	Decision taken
1	<u>Issues relating to Systems and procedures, which were raised by Planning Commission</u>		
(i)	Legal certification of Concession Agreement:	<p>Representative of Planning Commission stated that to facilitate appraisal and avoid any unintended flaws, for projects based on Model Concession Agreements (MCAs) the Sponsoring Authority may indicate the changes, if any, that have been made vis-à-vis the MCA. These changes may be classified as Project specific and substantive changes.</p> <p>The representative of Ministry of Law (MOL) was of the view that a certificate from the Joint Secretary/ Secretary of the Sponsoring Authority would not suffice since what is necessary is to ensure that the changes result in cohesive document which has linkages with the other parts of the agreement. This certification can be done by a legal consultant or by the Ministry of Law.</p>	<p>PPPAC decided that, henceforth, for all proposals received by PPPAC, it would be mandatory for the sponsoring authority (like DORTH) to certify, not below the rank of Joint Secretary, that the Concession agreement is as per the duly approved Model Concession Agreement. It is expected that the Sponsoring Authority, while issuing the certificate would adequately satisfy itself to the legality of the changes. The certificate would also indicate all changes under two separate categories: (i) the project specific, and (ii) substantive changes, in the Concession Agreement. While the former relates to the changes permissible by MCA, the later construe deviations from the MCA. After approval of PPPAC is accorded to the project, it will be the responsibility of the Sponsoring Authority to</p>

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			obtain a legal certification from a competent law firm that the deviations from the MCA in the concession agreement permitted by PPPAC have been incorporated in accordance with the PPPAC directions and that there are no other changes in the Concession Agreement, before inviting bids and this certificate would be submitted to the PPPAC Secretariat for record.
(ii)	Authentication of the MCA by PPPAC: The MCA had not been authenticated by CoI / PPPAC after making changes.	It was indicated by representative from NHAI that the Model Concession Agreement, as approved by the CoI, has been modified by the Planning Commission. Adviser to Deputy Chairman, Planning Commission clarified that the changes made in the MCA were editorial in nature.	It was decided that Planning Commission would place the approved MCA before the PPPAC with appropriate certification so that there is a shared understanding of the base MCA document that should form the point of departure for the concession agreements in the Roads sector in the future.
(iii)	Inclusion of Dissent Note in minutes:	It was indicated that as is the practice followed for a Cabinet Note, the Agenda Note of PPPAC includes the viewpoint of all constituents of the PPPAC. The minutes of the PPPAC present the gist of issues raised	It was acknowledged by all concerned that the purpose of PPPAC is to accelerate PPP projects in infrastructure by resolving outstanding issues in an expeditious

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		<p>by the members of the PPPAC. Committee system in the Government works on the principle of consensus and not necessarily unanimity in decision-making. Writing of dissent note should not become a practice by members.</p>	<p>and progressive manner keeping in view due diligence required for in respect of public funds. As such, in the nature of business of PPPAC, such dissent notes should be rare and non-standard occurrences. However, in extraordinary situations, any of the members of PPPAC may forward a dissent note to the Chairman who would, on merit, permit it to be appended to the minutes. It was also decided that the Sponsoring Authority would, henceforth, obtain the comments of the constituents of the PPPAC on Cabinet/CCEA notes before seeking Cabinet/CCEA approval for projects approved by PPPAC.</p>
(iv)	<p>Six laning of two lane highway:</p>	<p>It was indicated that the PPPAC had considered the Vadakkanchery-Thrussur (NH-47) project in its 10th meeting and approved the proposal of NHAI based on the information furnished by NHAI in the meeting which indicated much higher traffic projection.</p>	<p>It was decided that for all future proposals received by PPPAC it would be mandatory that all information furnished has supporting documents. It was also decided that six-laning of highways</p>

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			would ordinarily be undertaken only if the traffic projections justify a six-lane highway during the ensuing five years except in stretches which fall within corridors approved by the Cabinet/CCEA.
(v)	Need for preliminary meetings		It was decided that institutionalising preliminary meetings was likely to delay the appraisal process. However, it was open to any constituent to set up bilateral meetings to clarify any issue prior to the PPPAC meeting.
(vi)	Potential for large claims against NHAI/ GoI:		PPPAC acknowledged and reiterated the need for ensuring due diligence during the appraisal process, as prescribed by the guidelines of PPPAC.
(vii)	Concession Period:		Issues raised by Planning Commission stand addressed since the PPPAC, in its 10 th meeting, had already decided that DORTH/ NHAI will examine whether traffic projections could be a better alternative as a parameter for determination of the concession period.

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(viii)	Manual of Standards and Specifications:	Secretary, DORTH informed that the Manual of Standards and Specifications for four-lane highways had been finalised. The Manual for six-lane highways was pending approval and was expected to be issued by June 15, 2007.	It was decided that DORTH would informally share the Manuals with the members of the PPPAC before issue to enable the members to indicate their views, if any.
(ix)	Toll Rules: The PPPAC in the 10 th meeting had decided that the new Toll Rules will be issued within 60 days from the date of PPPAC meeting of May 11, 2007. However, for the seven projects approved by the PPPAC in that meeting, the bidding documents with the old Toll policy with new figures in place would be issued and these would be approved by Secretary, DORTH.	Adviser to Deputy Chairman, Planning Commission cautioned that inviting financial bids without first notifying the Rules was liable to make the process open to legal challenge. He further stated that in case bids were received and any change in the Toll Rules was subsequently made by the Cabinet, the entire bidding process would be vitiated. The representative of Ministry of Law indicated that as long as the principles that would be notified as Rules subsequently are in public domain and the financial aspects are clear, notification of rules subsequently will not create any legal problems.	PPPAC took note of the views of Ministry of Law and decided that no change in the earlier decision is warranted.

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(x)	Modification in the MCA:	<p>It was indicated that the matter was discussed in the last meeting and the PPPAC had decided that a single Escrow account, with a sub-account may be used for Pre-COD and Post COD operations. The level of performance guarantee presently envisaged could also be enhanced.</p> <p>Representative of Planning Commission indicated that it may not be a sufficient safeguard.</p> <p>Representative of NHAI pointed out that the toll revenue will be deposited in a sub-account of the escrow account and withdrawal from this sub-account will be linked to concessionaire's equity investment and achievement of project milestones. Further, an additional security for toll in the form of unconditional bank guarantee, equivalent to three months toll, shall be required to be furnished by the Concessionaire, which would be released only after the construction is completed. This would provide sufficient security for toll revenues.</p>	<p>It was decided that the earlier decision of the PPPAC on May 11, 2007 addressed these concerns adequately.</p>
(xi)		<p>Chairman NHAI suggested that a dispensation may be given allowing Secretary DORTH to approve changes in the MCA which are project specific and not substantive.</p>	<p>(a)It was decided that DEA would convene a meeting with DORTH, Ministry of Law and Planning Commission to further discuss the issue and elaborate on the modifications in the</p>

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			<p>concession agreement which would construe as substantial changes/ deviations to the MCA.</p> <p>(b) Any changes approved in the MCA by PPPAC in its earlier meetings may be made by NHAI with the approval of Secretary, DORTH.</p>
2.	Common issues of the three projects under consideration		
(i)	Applicability of Cabinet decision:	<p>It was indicated that the Cabinet decision dated May 18, 2006 relating to NHDP- III projects stated that all projects in the first instance should be offered on BOT basis and then only on Annuity with prior approval of CCEA and then on EPC again with the prior approval of CCEA only in the event that the earlier mode does not receive any response. Secretary, DORTH indicated that the decision was applicable only to NHDP-III and did not apply to the other phases of the NHDP. Planning Commission was of the view that it applied to all NHDP projects. The Committee was informed that Rangarajan Committee has recommended that the process approved by the CCEA for NHDP III projects should be followed for all road projects in the future.</p>	<p>It was decided that though the Cabinet decision dated May 18, 2006 may have been with reference to NHDP- III projects, it was desirable to follow the process for all NHDP projects. Even though the Rangarajan Committee Report has not been formally accepted, PPPAC recommended that for all road projects the process approved for NHDP-III projects should be followed in the future, unless directed to the contrary by the Cabinet. Hence, all future projects submitted to the PPPAC would be required to follow the Cabinet decision of May 18, 2006.</p>

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(ii)	MCA for BOT (Annuity) projects	<p>Advisor to Deputy Chairman, Planning Commission stated that the Concession Agreement provided by the NHAI for BOT (Annuity) projects is not an MCA as it has not been approved by the government at any level. Thus, a two-stage approval process by PPPAC would be required with only an initial in principle approval being considered, followed by finalisation of the Concession Agreements and submission for final PPPAC approval.</p> <p>It was indicated by Chairman, DORTH that the projects are based on the MCA for Annuity projects being followed in NHAI on which eight projects under Phase-I have already been completed and sixteen projects under Phase-II have been awarded.</p>	It was decided that Secretary, DORTH would examine the issue of approval of existing MCA by competent authority and inform PPPAC of the same.
3	Individual Projects		
(i).	Jalandhar – Amritsar section, Punjab on BOT (Annuity) basis:	<p>It was indicated that the project highway was of 20 km length on NH-1, where the adjoining 50 km stretch (from km 407.1 to km 456.1) was being operated under NHDP-III as a four lane project with two toll plazas. Though the DPR had been for 70 km, NHAI had sought bids for the 50 km stretch.</p> <p>Chairman, NHAI indicated that undertaking the project on BOT</p>	Since the stretch is high density and commercially viable, PPPAC decided that NHAI would seek bids on BOT (Toll) basis for the project.

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		<p>Adviser to Deputy Chairman, Planning Commission indicated that the Kamptee-Kanhan & Nagpur Bypass and Armur-Adloor Yellareddy projects would require restructuring for making these projects eligible for inviting bids on BOT (Toll).</p> <p>Representative from Department of Expenditure indicated that there was need to examine the financing flows of the projects and their implications.</p> <p>It was indicated that these two projects were the last of the NHDP-II projects being offered on BOT (Annuity).</p>	

The meeting ended with thanks to the Chair.

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**Public Private Partnership Appraisal Committee (PPPAC)
11th Meeting on June 4, 2007**

List of Participants

I. Department of Economic Affairs

- i. Dr D. Subbarao, Secretary, DEA (In Chair)
- ii. Shri Arvind Mayaram, Joint Secretary, DEA
- iii. Smt. Aparna Bhatia, Joint Director, DEA

II. Planning Commission

- i. Shri Gajendra Haldea, Adviser to Deputy Chairman, Planning Commission.
- ii. Shri Bhanu Mehrotra, Deputy Secretary, Planning Commission
- iii. Shri Dinesh Dhawan, SRO, Planning Commission
- iv. Shri M. Joseph Eugene Raj, SRO, Planning Commission

III. Department of Expenditure

- i. Smt. Rita Menon, Additional Secretary, Department of Expenditure

IV. Department of Legal Affairs

- i. Shri A.P. Aggarwal, OSD, Department of Legal Affairs.

V. Department of Road Transport & Highways

- i. Shri Vijay Singh, Secretary, Department of Road Transport & Highways
- ii. Shri A.P. Bahadur, CE, Department of Road Transport & Highways

VI. National Highways Authority of India

- i. Shri Pradeep Kumar, Chairman, NHAI.
- ii. Shri Nirmaljit Singh, Member (Technical), NHAI
- iii. Shri A.K. Bajaj, CGM, NHAI
- iv. Shri K.C. Varkeyachan, GM, NHAI
- v. Shri M.P. Sharma, GM, NHAI