

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

Public Private Partnership Appraisal Committee

27th meeting on September 1, 2009

Record Note of Discussion

The 27th meeting of the Public Private Partnership Appraisal Committee, chaired by Finance Secretary was held on September 1, 2009. The list of participants is annexed.

2. The Chairman welcomed the participants and noted that eight proposals from Ministry of Road Transport and Highways (MoRTH) would be considered during the meeting, of which 6 proposals were for grant of final approval for projects in Jammu & Kashmir on BoT (Annuity) basis and two other projects on BoT (Toll) basis.

3. Adviser, Planning Commission sought permission to first discuss the matter relating to the 26th meeting of the PPPAC held on August 26, 2009, which was agreed. Representative of Planning Commission stated that during the 26th meeting, Planning Commission had expressed reservations about allowing the entire VGF to be disbursed during the construction phase, i.e., allowing Equity Support up to forty percent of Total Project Cost (TPC) of the project. However, since the same had been approved for National Highways projects by the CoS for enhancing the viability of the projects, Planning Commission, though expressing their concerns regarding the enhanced exposure of the Government had accepted the proposed formulation and the departure to that extent from the provisions of the MCA. However, the proposed formulation in the project DCAs that the 'Equity Support' shall be equal to twice the Equity was in deviation from the MCA and may not be agreed to. It was stated that the above position has not been clearly indicated in the Record of Discussion of the meeting. Joint Secretary (Infrastructure & Investment), DEA clarified that the decision as finally taken by the PPPAC was that the Planning Commission would suggest a suitable formulation which took in view the dispensation which had been provided by the CoS and which did not constitute an onerous burden on the project finances and viability. The same had been indicated in the Record of Discussion. Secretary, Planning Commission suggested that Adviser, Planning Commission could provide the requisite formulation of the clause to MoRTH for further necessary action.

4. The Adviser to Deputy Chairman pointed out that allowing Equity support upto 40 per cent of the TPC implied that the project TPC provided for upto 40 percent financing charges, as against 25 percent earlier envisaged. Joint Secretary DEA suggested that this aspect had not been raised by Planning Commission earlier and could be separately examined by members of the PPPAC.

5. The Chairman of the PPPAC noted that the issue of allowing Equity support upto twice the equity in the BoT (Toll) projects was now only of theoretical importance since the matter had already been considered by the Chaturvedi Committee while reviewing the provisions of the MCA for four laning of National Highways. The Committee had recommended that the formulation proposed by NHAI/MoRTH for the projects may be adopted in the MCA for National Highways.

Agenda Item I: Proposals from Ministry of Road Transport and Highways for grant of Final Approval on BOT (Annuity) basis:

- i. **Rehabilitation, strengthening of Four laning of Udampur to Ramban section of NH 1A from km 67 to km 89 & km 130 to km 151 in the state of Jammu and Kashmir**
- ii. **Four laning of Qazigund to Banihal Section of NH 1A from km 189.350 to km 204.700 including 2 tunnels of 0.69 km and km 8.45 length on BOT (Annuity) basis in the State of Jammu and Kashmir**
- iii. **Rehabilitation, strengthening and 4 laning of Ramban to Banihal section of NH 1A from km 151 to km 187 on BOT (Annuity) basis on DBFO pattern in the state of Jammu and Kashmir**
- iv. **Four laning of Chenani to Nashri section of NH 1A from km 89 to km 130 including 9 km long tunnel with parallel escape tunnel on BOT (Annuity) basis of Jammu & Kashmir**
- v. **Rehabilitation strengthening and Four laning of Jammu-Udampur section of NH 1A from Km 15 to km 67 on BOT (Annuity) basis on DBFO pattern in the State of Jammu & Kashmir**
- vi. **Srinagar to Banihal section of NH 1A from km 187 to km 189.350, km 270.700 to km 286.110 and 187 to 220.700 on DBFOT (Annuity) in the State of Jammu and Kashmir**

6. Joint Secretary, DEA presented the broad contours of the six BoT (Annuity) projects. It was noted that 232 km stretch from Jammu to Srinagar, part of the North-South corridor, was proposed to be divided into six sub projects and bid out on BoT (Annuity) basis for a concession period of 20 years. The likely annuity payout was Rs 1,672 crore per annum; working out to approximately Rs. 26,919 crore over the proposed concession period of 20 years.

7. The representatives of Planning Commission made the following observations in respect of the projects:

- i. **Budget provision for undertaking Annuity mode of implementation of the project:** The annual outflow of Annuity payments on award of the projects would be approximately Rs. 1,672 crore. Such an outflow would take a major share of the resources available with NHAI and reduce the size of the NHDP programme. The representative of NHAI clarified that the decision on the revised Financing Plan of NHAI, considered by the Chaturvedi Committee, had allowed that the Government would provide additional budgetary resources for project stretches in J&K and SARDP-NE. Hence, resources were available with NHAI for implementing the projects in the BoT (Annuity) framework.
- ii. **Mode of implementation of projects:** The representative of Planning Commission stated that the projects had not been tested on the BoT (Toll) modality. The representative of NHAI clarified that implementation of the projects directly in the BoT (Annuity) framework was with the approval of the Cabinet.
- iii. **Model Concession Agreement (MCA) for BoT (Annuity) projects:** The representative of Planning Commission stated that the Guidelines for Formulation, Appraisal and Approval of PPP projects provided that projects, which are not based on a duly approved MCA, are required to obtain 'in principle' approval of PPPAC before issue of RfQ document. The procedure had not been observed in respect of the BoT (Annuity) projects which did not have a duly approved MCA. Joint Secretary, DEA pointed out that the Cabinet Secretariat had clarified that as per the Government of India (Transaction of Business) Rules, 1961, the MCAs would need to be approved by the Minister-in-Charge of the concerned Ministry/Department, after obtaining concurrence of all such Ministries/Departments, as are required to be consulted in terms of Rule 4 of the Government of India (Transaction of Business) Rules. Concurrence has to be obtained at the level of the Minister-in-charge of the consulted Departments and in case of disagreement between the Departments, the matter has to be placed before the Cabinet in accordance with the usual procedure. Hence, the only 'duly approved MCA' which had followed the laid down procedure was of the Port Sector. Furthermore, in case such a rigid approach was adopted with regard the clearance of projects, all the projects of Highway sector would require 'in principle' of the PPPAC before issue of RfQ, since none of the MCAs of the road sector, viz. for four laning/ six laning of Highways on BoT (Toll) basis or the MCA for

OMT of National Highways, had the approval of the Cabinet. Over emphasising the process in isolation without due consideration of the spirit of the Guidelines would not be desirable. Since the MCAs of the road sector, had broad acceptability, the projects were being considered for grant of final approval without following the requirement of seeking 'in principle' approval, prescribed for *new sectors engaging in PPPs*. Adviser to Deputy Chairman, Planning Commission stated that their concern with the MCA for BoT (Annuity) rested on the fact that no formal discussion had taken place on the MCA for BoT (Annuity) projects. Joint Secretary, MoRTH clarified that the framework for BoT (Annuity) projects had been discussed in the CoS. The draft Cabinet Note for seeking approval of the CCEA/CCI had also been circulated to all the members of the PPPAC and responses received thereon. Hence, the MCA being used for preparation of the project DCAs had gone through the process of deliberation and Inter Ministerial consultations. The representative of NHAI further confirmed that the same framework had been utilised for BoT (Annuity) projects earlier granted final approval by PPPAC. Secretary, Planning Commission suggested that pending approval of the proposed MCA by the CCI, the projects may be considered for final approval based on the proposed MCA for BoT (Annuity) projects. The Chairman endorsed the view.

- iv. **Linking Annuity payment to inflation:** The Adviser to Deputy Chairman, Planning Commission stated that the current framework of the MCA provided for annuity as a fixed amount spread over a period of 20 years. The same is not linked to inflation in any manner. Therefore, all inflation risk would have to be borne by the concessionaire who has no control or means to manage this risk. This would not only lend considerable uncertainty to the contract, it would also lead to a high risk premium that the concessionaire might have to seek in order to cover the inflation risk. The representative of NHAI clarified that Annuity payment by its very definition implies fixed amounts paid over a period of time. Hence, the issue of linking the Annuity payments to the WPI was not being considered. Secretary, Planning Commission suggested that since not linking the Annuity payments to inflation was a conscious decision of MoRTH and thus provided for in the MCA for BoT (Annuity) projects, the same may be accepted by the PPPAC for the purposes of the projects under consideration. Views of Planning Commission on the matter, if not already conveyed with other comments on the draft Cabinet Note on the MCA, may be separately conveyed for consideration by MoRTH. This was agreed to.
- v. **High Priority Projects:** The representative of MoRTH indicated that the projects were part of the 100-days agenda of the Government. Adviser to Deputy Chairman, Planning Commission stated that the Guidelines for

Formulation, Appraisal and Approval of PPP projects prescribe that the projects should be considered by the PPPAC after the appraisals have been completed and written response from the Sponsoring Authority received on each of the observations in the Appraisal Notes. The said procedure and due diligence was being compromised for the sake of meeting the requirement of high priority projects/100-days' agenda of the Government. Joint Secretary, DEA clarified that the Sponsoring Authority had provided written comments on the Appraisal Notes of DEA and Planning Commission, a day before the meeting, to the PPP Cell as well as Planning Commission through e-mail. The response had been examined by DEA. Planning Commission could indicate in case any of the responses were not acceptable to them; the procedural requirements for convening a PPPAC meeting had already been duly observed and completed. It was further pointed out that CCEA in its meeting dated March 22, 2007 stipulated that all projects should be placed for the consideration of the PPPAC within one month of their submission. Representative of Planning Commission stated that more time was required to examine the responses of MoRTH. Further, MoRTH also required to revise the project DCAs based on the observations of the legal advisers. It was decided that more time would be provided to allow Planning Commission to undertake closer examination of the response of MoRTH on the project appraisal notes.

- vi. **Justification of four laning:** Adviser, Planning Commission noted that the PCUs on the project stretch were just over 13,000 PCUs. Further, a rail line was proposed to be developed there. Hence, there was no justification for four laning the stretch. Secretary, Planning Commission requested the representative of Department of Legal Affairs to clarify whether the Cabinet decision, allowing construction of the road on BoT (Annuity) basis since four-laning the highway on BoT (Toll) basis was unviable/difficult, implicitly allowed implementing the project on BOT (Annuity) with an unaltered road description, i.e., as a four lane highway, or whether specific approval was required to be sought for the proposed capacity augmentation. Joint Secretary, MoRTH stated that the proposed stretch was the northern most part of the North-South corridor, connecting Jammu to Srinagar, and had been granted approval for four laning under NHDP Phase I.

8. Joint Secretary, Department of Expenditure pointed out that decision had been separately taken that the J&K stretches as well as the SARDP-NE stretches, which would be executed by NHAI, would be funded entirely through additional budgetary support. The total requirement on this has been estimated as per the revised Financing Plan as Rs 39,329 crore - Rs 40,000 crore. This estimate includes commitments for 963 km distributed between SARDP-NE (394 km on BOT(Annuity) and 330 km on EPC) and Jammu and Kashmir (239 km road stretch on BOT(Annuity) mode).

Therefore, 963 km was proposed to be built with Rs 40,000 crore over a span of 2009-10 to 2027-28 with an annuity outgo of Rs 2421 crore. The proposed roads in J&K, being considered by the PPPAC were alone accounting for an annuity space of Rs 1672 crore, leaving Rs 750 crore for annuity payment on the 400 km of SARDP-NE. Further, the EPC payments were also expected to be made for the SARDP-NE from the same budget availability. It did not appear that the proposed project cost and the possible annuity payments would leave adequate resources for undertaking/ completing other activities. Hence, there was a need for re-look at the requirements of the projects. A conscious view was, therefore, required on the following aspects:

- i. A decision needs to be taken whether there is a actual need for a four laning of the stretches. The option of developing the stretches as two lane with paved shoulder could be explored.
- ii. The aspect of multi-modal transport facilities also required to be factored before a decision could be taken. The option of the train line proposed to be developed bearing a portion of the traffic requirements may also be considered.
- iii. In case it is felt that a 4-laning is, indeed necessary, scope for reduction in cost should be explored, keeping in view the safety aspect.

9. Adviser to Deputy Chairman, Planning Commission supported the views of Department of Expenditure. Joint Secretary, DEA requested MoRTH to indicate whether the proposed cost of the project stretches was realistic and had been contextualised in the revised Financing Plan. Representative of NHAI stated that the exact cost of the projects taken into the Financing Plan would require confirmation.

10. The Chairman suggested that decision on the project proposals may be deferred to facilitate greater clarity on the issues which had been flagged by the members of the PPPAC. Further, the two BoT (Toll) projects may also be considered later while considering the BoT (Annuity) projects. He summarised the decisions of the meeting as under:

- i. Planning Commission may examine the responses of MoRTH on the Appraisal Notes and indicate outstanding concerns, if any.
- ii. The aspect that the proposed MCA for BoT Annuity was pending final approval of the Cabinet to be considered as duly approved MCA was a procedural issue. Therefore, projects based on the proposed MCA could be considered directly for grant of final approval.
- iii. The proposed project stretch from Jammu to Srinagar was part of the North South corridor and of strategic importance. Nevertheless, MoRTH may examine the sub-stretches to see whether there was possibility revisiting the proposed cost of the stretches or to contain the cost by two-laning portions where traffic did not justify immediate four laning.

- iv. MoRTH may, thereafter, confirm the project costs and availability of outlay within the revised Financing Plan for consideration of the projects by PPPAC.

(Action: MoRTH, Planning Commission)

11. The meeting ended with a vote of thanks to the chair.

**Ministry of Finance
Department of Economic Affairs**

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**Public Private Partnership Appraisal Committee (PPPAC)
27th Meeting on September 1, 2009**

List of Participants

- I. Department of Economic Affairs**
- i. Shri Ashok Chawla, Finance Secretary (In Chair)
 - ii. Shri Govind Mohan, Joint Secretary
 - iii. Smt. Aparna Bhatia, Director
 - iv. Shri Abhijit Phukon, Deputy Director
- II. Department of Expenditure**
- v. Ms. Meena Agarwal, Joint Secretary (PF II)
- III. Planning Commission**
- vi. Ms. S. Pillai, Secretary
 - vii. Shri G. Haldea, Adviser to Dy. Chairman
 - viii. Shri Ravi Mittal, Adviser
 - ix. K.R. Reddy, Joint Adviser
- IV. Ministry of Law**
- x. D. Bhardwaj, Addl. Legal Adviser
- V. Department of Road Transport & Highways**
- xi. Shri P.K. Tripathi, Joint Secretary
 - xii. Shri Nirmal Jit Singh, Addl. Director General
 - xiii. Shri A.V. Sinha, Addl. Director General
- VI. National Highways Authority of India**
- xiv. Shri Subhash Patel, Member Finance
 - xv. Shri S.K. Nirmal, CGM
 - xvi. Shri Akil Ahmad
 - xvii. Shri A.K. Jain, DGM