Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell
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Empowered Institution for the Scheme for Financial Support to Public Private Partnerships in Infrastructure

44th Meeting on December 13, 2012

Record Note of Discussions

The forty-fourth meeting of the Empowered Institution (EI), chaired by Additional Secretary, Department of Economic Affairs (DEA) was held on December 13, 2012. The list of participants is annexed.

2. The EI noted that there were four proposals under consideration, viz., one proposal for grant of final approval, two proposals for grant of in-principle approval and one proposal for enhancement of project cost and viability gap funding (VGF) support. These proposals encompass road sector, education sector and power sector.

Agenda Item I: Proposal from Government of Rajasthan (GoR) for grant of final approval: Two-laning of Jaipur-Bhilwara section of SH-50 from km 0.0 to km 212 on BOT (Toll) basis.

Total length: 212 km; Total Project Cost: Rs. 220 crore; Concession Period: 22 years including 1.5 years of construction period. VGF from Government of India: Rs. 44 crore. Actual VGF by L-1 bidder: Rs. 88 crore, VGF from Government of Rajasthan: Rs. 44 crore
Major development works/ structures: Major Bridges: 1; Minor bridges: 3; Bypass: 1 at Kekri town of 6 km; Causeway: 7; Culverts: 131; Toll plazas: 4 (km 20, km 71, km 124, & km 176); Bus-bays/shelters: 7; Major road junctions: 10; Minor road junctions: 166; Truck Lay Byes: 3

3. Representative of GoR presented the proposal. The proposal was considered by the EI in its 18th meeting held on July 2, 2009 and granted in-principle approval. The bid process for the project has been completed. The VGF quoted by the L-1 bidder is Rs. 88 crore, which is 40 per cent of the TPC. The State Government has executed the Concession Agreement on July 12, 2010, with M/s Bhilwara-Jaipur Toll (Pvt.) Ltd. and the Financial Closure has been achieved on July 28, 2011 and Supplementary agreement signed on March 6,

2012. The Appointed Date of the project is February 2, 2012. Ninety percent of the total land required has been handed over to the Concessionaire. The construction works have commenced and the Concessionaire has infused equity of Rs. 45.45 crore for the project and Lenders have disbursed the loan amount of Rs. 39.92 crore.

4. Director, DEA queried whether the EI was informed about the increase in concession period to 22 years as against 20 years proposed at the time of approval of the project. Advisor, GoR responded that concession period has been increased to 22 years for enhancing the viability of the project and reducing the expected VGF amount. This was informed vide a letter dated 15.10.09.

5. The Chair enquired about the reasons for higher estimation of the project cost by the financial institutions, i.e., Rs. 322 crore as against Rs. 220 crore estimated by GoR and reflected in the Concession Agreement. He noted that the project was granted in-principle approval in 2009 and queried about the delay in seeking final approval for the project.

6. Advisor, GoR explained that the higher estimation of the project cost by lenders at Rs. 322 crore has been on account of rise in material cost for bitumen, concrete etc. The estimates by the lenders were based on the prices for the year 2011, while the earlier costs were assessed based on 2008 prices. The project has been posed for final approval after the project has achieved financial closure in July 2011. Due to delay in financial closure, the Concessionaire has paid a penalty of Rs.83 lakh to the GoR. The construction has commenced during 2011.

7. The Chair queried about the bid process adopted that resulted in award of project at VGF amounting to 40 percent of TPC. Advisor, GoR informed that the invitation of the RfQ had resulted in short-listing of five bidders of which four purchased the RfP documents. Single bid with VGF quote of Rs 88 crore, i.e., 40 percent of TPC, was received, which was accepted by GoR.

8. All members of the EI were in support of grant of final approval for VGF support to the project.

9. The **Empowered Institution granted final approval** to the project for viability gap funding of Rs. 44 crore (20 percent of TPC of Rs. 220 crore) under the Scheme.

Agenda Item II: Proposal from Government of Mizoram (GoM) for grant of in-principle approval for: Development of Tuivai Hydro Electric Project (210 MW) on DBFOT basis.

Capacity of generation: 210 MW of hydro electric power; Total Project Cost: Rs. 1700 crore; Cost of pre-construction activities to be financed by GoMi: NA; Concession Period: 35 years including 5 years of construction period. VGF from Government of India: Rs. 340 crore (20 percent of TPC)

Major development works/ structures: Construction of 155m high Dam, 491 m long chute spillway, 1200 m long diversion tunnel of 12.5 m dia, water conductor system comprising 4950m long head race tunnel of 6m dia through a hill between Ngopa and Phuaibuang town, a surge shaft, a pressure shaft of 750m length, a surface power house at Pullen near Phuaibuang for an installed capacity of 3*70 MW (210 MW), switch yards, construction of haul and approach roads of 70 km length

10. Representatives of Government of Mizoram presented the proposal. The EI noted that the State Government proposes to develop the Tuivai Hydro Electric Project on a tributary of River Barak for an installed capacity of 210 MW in the state of Mizoram on PPP mode at an estimated Total Project Cost (TPC) of Rs. 1700 crore. The hydro electric project is proposed to be developed with VGF support. It is the first project of its kind in the North Eastern States of the country as well as the first hydro electric project seeking VGF under the Scheme. The Joint Electricity Regulatory Commission (JERC) for Manipur and Mizoram, vide its order dated November 11, 2011, has fixed the tariff of Rs. 3.55 per unit assuming VGF for the project amounting to 20 percent of the TPC. This tariff shall remain as a fixed charge throughout the concession period of 35 years. It was informed that EI has earlier granted in-principle approval for shortlisting of bidders. Seven bidders have been shortlisted. The Concession Agreement for the project is based on the Power Transmission Agreement approved by EI and has been modified for adoption for a power generation project. Provisions of standard bidding documents of Ministry of Power (MoP) for Case 2 projects have been followed.

11. The Chair enquired whether after implementation of the project, the State would be surplus in power and reasons of fixing the unit charges at Rs. 3.55 per throughout the concession period without any provision for escalation.

12. Engineer-in-Chief, Power, GoM responded that the energy requirement within the State on implementation of Rajiv Gandhi Gramin Vidyut Yojna (RGGVY) is expected to be 300 MW from the existing level of 100 MW by financial year 2020-21. Hence, no surplus in generation of power is estimated during peak-demand periods.

13. Joint Secretary, MoP further explained that since this is hydro power project, it entails onetime costs installation and development of generation plant and minimum O&M costs are envisaged. Unlike the thermal projects, the unit cost of production of hydro power reduces over a period of time. Hence, no escalation is usually provided in the unit charges for hydro power projects.

14. Representative of Planning Commission stated that the main issues highlighted by them with respect to the project in their appraisal note relate to the following :

(i) Tariff should be determined through competitive bidding based on the guidelines issued by Ministry of Power under Section 63 of the Electricity Act;

(ii) DEA may examined and obtain necessary approval of the Cabinet as to whether VGF is admissible for power generating units;

(iii) The JERC has fixed the tariff of Rs. 3.55 per unit assuming 20 percent of TPC as VGF. Since, the VGF is determined through competitive bidding, presuming VGF for a project at the time of determining tariff requires review to establish that it is in accordance with Section 62 of the Electricity Act;

(iv) Bidding should be undertaken based on the Standard bidding documents of MoP;

(v) In case VGF is granted to one generating unit, it may lead to similar requests from other States and result in market distortions in tariff determination.

15. Joint Secretary, Ministry of Power responded that as per the Amendment to the Tariff Policy 2006, notified on July 08, 2011, *"a developer of hydro electric project, would have the option of getting the tariff determined by the appropriate commissioned on the basis of performance based cost of service regulation with the fulfilment of the certain conditions"*. Accordingly, tariff has been fixed upfront by the JERC. Representative of Planning Commission stated that as per the Tariff Policy, the conditions were to be fulfilled by January, 2011. Joint Secretary, MoP responded that, this time period has been extended up to December 31, 2015. Further, no standard bidding documents has been issued by the MoP for power generation projects on PPP mode. However, the proposed documents have been prepared based on the Jhajjar Power Transmission Project which has been granted approval by the EI for VGF support. These documents have been customised for generation project and also incorporated relevant provisions of Standard Bidding Documents for Case- 2 projects. These documents have been examined by the Ministry of Power. The observations of MoP thereon have been accepted by the GoM. Further, since the project is located in the North Eastern region, grant of VGF may not result in distortions in the market with respect to determination of tariff, in the event VGF is granted to the proposed project.

16. Commissioner (Power), GoM confirmed that as advised by Ministry of Power, the project documents have been legally vetted by a reputed law firm.

17. Director, DEA stated that as per the Scheme, power is an eligible sector for grant of VGF. Hence, the Jhajjar Power Transmission project was considered by the EI. Further, Unitary Charges were fixed for the said project by SERC, assuming 30 percent VGF support. Hence, tariff fixation by JERC by considering 20 percent VGF for the instant project may not require a review since, the actual VGF in respect of the project, if the proposal is approved, would be determined through a competitive bid process. The Tariff Policy that allows that the tariff can be determined by the appropriate Commission for a hydroelectric project, *"with bidding on the basis of only one single quantifiable parameter such as, free power in excess of 13 percent, equity participation offered to the State Government, or upfront payment etc"*. The core issue that requires a response from Ministry of Power is whether, the conditions of the Tariff Policy for this dispensation are satisfied for the instant project and, specifically, whether VGF, which is not indicated as a possible bid parameter in the Tariff Policy amendment, can be accepted under the flexibility allowed therein under the ambit of the word "*etc*".

18. Joint Secretary, Power reiterated that the view of MoP is that the project is admissible for VGF support in accordance with the Electricity Act, 2003 and the Tariff Policy amendment of 2008. This will also be confirmed in writing, if sought by DEA.

19. Deputy Secretary, Department of Expenditure indicated that the project is support-worthy. The applicability of VGF needs to be clearly established to convince the members of EI. Further, GoM may also provide the proposed plan for evacuation and distribution of power generated through the project.

20. The Chair complemented the State Government for their endeavour. He observed that the proposal is the first project posed for VGF support for power generation and the decision thereon would serve as a precedence for subsequent projects. While power generation comes under the ambit of definition of 'Infrastructure' notified by DEA and power is notified as an eligible sector for VGF support under the Scheme, greater clarity is required for arriving at a consensus that sanction of VGF would not contravene the provisions of the Electricity Act and Tariff Policy. Hence, Department of Economic Affairs would convene a separate meeting to discuss these aspects and to also consider whether, VGF can be allowed for such projects, especially in the North East States, which are a focus area of GoI for infrastructure development. He requested MoP to review these aspects in consultation with the Central Electricity Authority, and if required, Ministry of Law. He further requested Planning Commission to re-examined their position in view of the clarification of Ministry of Power and complete the appraisal of the project documents.

(Action: DEA, DoE, MoP and Planning Commission)

Agenda Item III: Proposal from Government of Rajasthan (GoR) for approval for increase in project cost (and consequently VGF): Development of 50 Senior Secondary Schools (Classes VI to XII) as 10 projects in ten districts of Rajasthan on DBFMOT basis.

21. Director, DEA informed that Principal Secretary, School Education, GoR has informed that due to urgent work, representatives from GoR were unable to attend the meeting and requested that the project may be considered in the next meeting.

22. The EI deferred the consideration of the proposal.

(Action: DEA)

Agenda Item IV: Proposal from Government of Bihar (GoB) for grant of in-principle approval: Two-laning with Paved Side Shoulder (PSS) of Bihta-Mahabalipur-Aurangabad section of SH-2 & NH-98 (from km 49.4 to km 127.45 of NH-98 & km 2 to km 37.80 of SH-2) under DBFOT (Toll):

Total length: 116.20 km; Total Project Cost: Rs. 362 crore; Cost of pre-construction activities: to be financed by GoB; Concession Period: 20 years including 1.5 years of construction period. VGF from Government of India: Rs. 72.40 crore
Major development works/ structures: Major Bridges: 1 at river Punpum; Minor bridges: 9; Flyover: Nil; ROB: 1; Bypass: Nil; Major Junctions: 14; Minor junctions: 73; Toll plazas: 2 (Km. 54.125 & km 99.650); Cattle crossing: 1; Vehicul;ar underpasse: 1; Culverts: 348; Bus Bays/ shelters: 22; Truck Lay Byes: 2

23. Director, DEA informed that the project was previously considered in the 39th meeting of the EI, held on April 3, 2012, and deferred, pending clarification from MoRTH on whether the project was eligible for tolling in accordance with the National Highway Fee (Amendment) Rules 2010, wherein tolling of sections of two-laned NH has been benchmark to the provision that the average investment for upgradation exceeds Rs. 2.50 crore at April 1, 2008 prices. On escalation for inflation, based on Wholesale Price Index (WPI), for the project being implemented in the year 2012-13, the threshold investment to establish admissibility for tolling, as per NH Fee Rules, is Rs. 3.31 crore per km.

24. Director, DEA informed that PPPAC in its 54th meeting, held on September 30, 2012, had accepted the view of MoRTH and NHAI that average investment on the project consists of the TPC and cost of pre-construction activities, viz., the cost of land acquisition, R&R and shifting of utilities. Hence, the investment for the projects is being determined in accordance with this decision.

25. Deputy Secretary, DoE indicated that the EI may consider whether the investment on a project for establishing applicability of tolling should be based upon the Total Project Cost of a project, as defined under the VGF Scheme and Model Concession Agreement or on the basis of TPC plus the cost of pre-construction activities. Deputy Secretary, DoE suggested that since the EI considers only the TPC to determine the VGF support for a project, the same cost may be the reference value for the eligibility of tolling.

26. Director, DEA stated that establishing the eligibility of tolling is a critical pre-condition for NH stretches and the decision of the same has been taken after deliberation by the PPPAC based on the views of MoRTH. Hence, EI is not the appropriate forum to re-consider the decision of the PPPAC with respect to central sector projects. Further, the TPC indicated in the Model Concession Agreement and the Scheme is benchmarked to the cost to be incurred by the Concessionaires for the purposes of determining of VGF support or contingent liabilities payable to the Concessionaire and other project financiers. However, applicability of tolling is determined based on NH Fee Rules, 2008 and amendments thereon. The Fee Rules provide that "*The rate of Fee for use of section of National highway, having two lanes and on which the average investment for up-gradation has exceeded rupees two and a half crore per km at the first April 2008 prices, shall be sixty percent of the rate of fee specified under sub rule (2) of the rule 4*". Hence, for this purpose, average investment for the proposed upgradation of the project stretch constitutes the relevant benchmark. Since, the investment for upgrading the project is undertaken by the Authority and the Concessionaire, the cost to be incurred for pre-construction activities has been considered admissible by the PPPAC for estimating the investment on a project.

27. The Chair requested Joint Secretary (Infra), DEA to discuss the matter separately with Department of Expenditure to determine whether the matter requires review by the PPPAC.

(Action: DEA and DoE)

28. Resident Engineer, GoB informed that the cost of pre construction activities is estimated as Rs. 98 crore. Accordingly, the investment for up-gradation (i.e. TPC and the cost of land acquisition, R&R and shifting of utilities) in respect of the instant project is Rs. 3.95 crore per km (i.e. project cost of Rs. 3.11 crore per km for two-laning with paved side shoulders and the cost of pre-construction activities of Rs. 98 crore [Rs. 0.84 crore per km]), which is more than the threshold limit of Rs. 3.31 crore per km. Hence, the project may be considered for approval.

29. SE, MoRTH informed that the NH portion of the project has been approved by the competent authority including Public Investment Board (PIB) under non –NHDP (NH) to be implemented on EPC basis under World Bank funding. Hence, project may not be considered on BOT (Toll) basis. The Chair indicated that since the project has been posed on BOT (Toll) basis which allows for efficient utilization of private sector investment and has been recognized as a better method of implementation, it may first be tested on BoT(Toll) instead of utilizing loan from World Bank. The World Bank loan may be extended to some other project in the State that may not be viable on BoT (Toll) mode. A separate communication may be sent to the MI Division of DEA and DoE for not extending loan facility from World Bank in respect of this project.

(Action: DEA)

30. All members of the EI were in support of grant of in-principle approval for VGF support to the project.

31. The EI granted **in-principle approval to the project** for VGF support of Rs. 72.40 crore having TPC of Rs. 362 crore subject to the following conditions:

a. GoB shall confirm in writing that the cost of pre construction activities in respect of the project is Rs. 98 crore.

b. GoB shall obtain the environmental, forest and other approvals and clearances before the award of the project.

c. GoB shall provide 90 per cent of the land to the Concessionaire by Appointed Date, in line with the provisions of the draft Concession Agreement.

d. GoB shall incorporate the observations of Planning Commission and DEA with respect to corrections in the Schedules of the project DCAs as agreed in their responses to the appraisal notes.

e. GoB shall obtain prior approval of the EI on any change in TPC, scope of work or project configuration as noted above.

f. GoB would circulate revised projects documents to the members of EI.

(Action: GoB)

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