

F. No. 5/63/2018-PPP
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

North Block, New Delhi
Dated 11th March, 2019

OFFICE MEMORANDUM

Subject: Record of Discussion of the 86th Meeting of Public Private Partnership Appraisal Committee (PPPAC)

The undersigned is directed to enclose a copy of Record of Discussion of the 86th PPPAC Meeting held on 28.02.2019 under the chairmanship of Secretary (Economic Affairs), Ministry of Finance for information and necessary action. This meeting considered the proposal of Ministry of Shipping for Operation, Management and Development (OMD) of the Multimodal Terminal at Varanasi under PPP mode.

Encl: as stated above


(Mukesh Kumar Gupta)
Director (PPP)

To,

1. CEO, NITI Aayog, Sansad Marg, New Delhi
2. Secretary, Ministry of Shipping, Transport Bhawan, New Delhi
3. Secretary, Department of Expenditure, North Block, New Delhi
4. Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi
5. Chairman, Inland Waterways Authority of India, Noida, Uttar Pradesh

Copy to:

1. Sr. PPS to Secretary (EA)
2. PPS to JS (IPF)

Record of Discussion of 86th Meeting of Public Private Partnership Appraisal Committee (PPPAC) held on February 28th, 2019

The 86th Meeting of Public Private Partnership Appraisal Committee (PPPAC), chaired by Secretary, EA (the Chair) was held on 28.02.2019 to consider the proposal of Ministry of Shipping for Operation, Management and Development (OMD) of Multimodal Terminal at Varanasi under PPP mode. The list of participants is *annexed*.

Proposal for Operation, Management & Development (OMD) of Multimodal Terminal (MMT) at Varanasi under PPP mode

Project Description: A Multimodal terminal with road connectivity from the IWT Terminal to NH-7 is proposed in PPP mode under which the selected Private Developer shall be responsible for O&M of the existing terminal of Phase I handed over by IWAI and for expansion of terminal, termed as Phase II of the project, with an investment of Rs. 334.38 crore.

Construction Period: Initially there is only O&M of the Project Facility of Phase I for first seven years. The Concessionaire will commence the construction of Phase II after 7 years and complete the construction within 2 years thereafter.

Estimated Project Cost for Phase II: Rs. 334.38 crore to be incurred by the Concessionaire after 7 years from Commercial Operation Date (CoD) of Phase I.

Concession Period: 30 years including construction period with provision of another 30 years extension.

2. JS (IPF) informed the PPPAC that a proposal from Ministry of Shipping (MoS) for Operation, Management and Development (OMD) of Multimodal Terminal (MMT) at Varanasi under PPP mode has been received for consideration of PPPAC. The proposal has been appraised by the PPPAC members and the appraisal note have been sent to the MoS. However, RFQ document was shared with PPPAC only on 28.02.2019 (the day of the PPPAC meeting). Therefore, thorough examination of the same could not be done.
3. VC, Inland Waterways Authority of India (IWAI) made a brief presentation on the proposal and informed PPPAC that Phase-I of Varanasi MMT was inaugurated on 12.11.2018 with Project Cost of Rs. 200 crore (excluding cost of land) and having Capacity of 1.26 Million Metric Tonnes Per Annum (MMTPA). The estimated cost of Varanasi MMT Phase-II is Rs. 334.38 crore and Rail connectivity will cost around Rs. 85 crore. Regarding land requirement and acquisition status, it was informed that out of total requirement of 34.755 hectare (ha) of land, 18.897 ha is in possession of IWAI and payment for 12.363 ha of land has been made to district administration and land transfer initiated. Remaining 10% of land (3.495 ha) is yet to be acquired by IWAI.
4. Secretary (MoS) informed that the RFQ for the OMD for Varanasi MMT has been issued and four bidders have been pre-qualified after due diligence. The RFQ was based on the model

RFQ issued by NITI Aayog. PPPAC acknowledged that RFQ was published and bidder shortlisting had been completed.

5. Following issues were discussed during the Meeting:

i. Two Stage PPPAC Approval: It was stated that as there is no approved MCA for Inland Waterways Multimodal Terminal and "Inland Waterways" is a separate sub-sector in Harmonized Master List of Infrastructure as distinct from "Ports", two stage approval of PPPAC may be required, as per para 6.3 of the PPPAC Guidelines. It was also pointed out that given the pilot nature of the project, it may also be prudent to follow the two-stage approval process. In case of two stage approval, RFQ should be issued only after the in-principle approval by PPPAC. However, in this case, RFQ had already been floated. After detailed deliberations, it was decided that as the MCA for Ports has been adapted for riverine terminals owing to operational similarities, infrastructure requirements and common Administrative Ministry, this project may be considered for the 'in-principle' and 'final' approval simultaneously.

ii. Bundling of three MMTs: It was explained that although there has been demand from the industry for bundling the three MMTs (Varanasi, Sahibganj, and Haldia) in one PPP Project, the same was not favored because of varying schedule of completion for the three MMTs. While Varanasi MMT has already been inaugurated in November, 2018, Sahibganj MMT is expected to be ready for operations by June, 2019 and Haldia MMT by December, 2019/January, 2020. After detailed discussion on the pros and cons of bundling, PPPAC decided that it would be appropriate to have separate transactions for the three MMTs with CRoFR as decided below.

iii. Conditional Right of First Refusal (CRoFR): It was suggested that the provision of CRoFR may not be required, as the project is generating revenue from the beginning and there is no envisaged capital investment by the Concessionaire for first 7 years. It was explained to PPPAC that Concessionaire will be obliged to complete the construction of Phase II by the end of 4 years from COD. MMTs at Varanasi, Sahibganj and Haldia should have been a single PPP project ideally, but Varanasi MMT project will become unattractive if there is no option of CRoFR for Sahibganj and Haldia MMTs. Therefore, it was decided that CRoFR is required to increase bidder participation. A provision of 'Minimum Reserve Rate' will be included by IWAI during the bidding process for Sahibganj MMT and Haldia MMT to prevent artificially low bids, especially in case when Varanasi MMT concessionaire is the sole bidder.

iv. Expansion Phase timelines: It was pointed out that Phase-II of the project is proposed to be completed in 9 Years and construction is to start after 7 years from COD of Phase I. Therefore, the bidding process should be carried out after 7 years of COD as it would lead to better bids. Secretary, (Shipping) explained that Least Available Depth (LAD) under the Jal Marg Vikas Project (JMVP) for the 1,400 km Haldia-Varanasi stretch is expected to be completed by the end of 4th year from COD of Phase I. COD will be three months from the date of issue of letter of award. In view of the revised timeline, PPPAC recommended that the concessionaire may be permitted to undertake Phase-II development immediately after COD and the Bidding Documents may be modified accordingly.

v. Concession Period: It was pointed out that as the project is pilot in nature and considering the MCA for the Port sector, Concession Period should not be more than 30 Years. It was also felt

that as the sector is at inception stage, and things would change as the sector attains maturity, 30 year concession period may be optimal. However, it was pointed out that RFQ has already been floated with the provision of Concession Period of 30+30 Years and Bidders have been shortlisted. However, it was pointed out that RFQ stage is for shortlisting bidders based on technical and financial criteria, and Concession Period becomes material only at the RFP stage. Therefore, after deliberations, PPPAC decided to keep the Concession Period at 30 years.

vi. Key Performance Indicators: In respect of the Key Performance Indicators (KPIs), PPPAC was informed that the KPIs, such as equipment reliability, equipment availability, average container moves etc are included as Annexure IV in "Performance Standards and Damages" of Draft Concession Agreement (DCA).

vii. License Fees: It was decided that License fee of Rs. 1 (one) per annum shall be payable by concessionaire for entire land being made available. PPPAC directed that not more than 10% of total land should be allocated for non-operational activities and concessionaire will be allowed to develop this land only after the completion of Phase-II. It was also decided that entire land (including for non-operational activities) should be transferred back to the Authority free of cost after end of the concession period, and land development should be as per the applicable local laws.

viii. Tariffs: It was pointed out that cargo tariffs need to be pre-determined and should be provided upfront. On this, PPPAC was informed that upfront tariffs have been included in Annexure XIII of the Concession Agreement which is based on the notified Tariff Regulations for GR Jetty 1 & 2 and BISN jetty awarded to a private operator by the IWAI. The Chair clarified that Tariff should be as per the formula defined in the Concession Agreement and there should be no discretion with IWAI in this regard, which would mitigate regulatory risk.

ix. Minimum Guaranteed Cargo: It was agreed that minimum royalty shall be paid by concessionaire for minimum guaranteed riverine cargo starting from the 4th anniversary of Commercial Operation Date (COD) of Phase I. The threshold for minimum cargo shall be estimated on the basis of final rated capacity of 3.85 MMTPA for Varanasi MMT.

x. Royalty Calculation: It was decided that for the purpose of Royalty calculation, there should be an equivalent benchmark for all types of cargo including dry-bulk, break-bulk, liquid-bulk, containers, bagged etc. VC, IWAI stated that as per the Bill of Lading, all types of cargo would be converted into equivalent benchmark (tonnage) and the conversion table would be stated in the Concession Agreement.

xi. Passenger Terminal: It was informed that the scope of work includes operation of passenger ferry terminal at Varanasi MMT and so there would not be separate bidding for the same.

xii. Responsibility of Independent Engineer: It was pointed out that responsibility of Independent Engineer should be as per the MCA for the Port sector. It was also suggested that definition of 'Expert' may be stated in the DCA to reflect its relevance for dispute resolution, and definition of 'Applicable Law' may be modified to reflect that Applicable law shall be considered as per Court of Records. The members of PPPAC agreed to the same.

xiii. Discrepancies in the RFQ: PPPAC observed some discrepancies between the RFQ and draft RFP documents. As per the RFQ, CRoFR was given for the Freight Village to the selected bidder, while in the RFP, CRoFR has been mentioned for Sahibganj and Haldia MMTs. While it was mentioned that corrigendum has been issued in which this discrepancy has been rectified, no such corrigendum has been received in DEA. It was directed by the Chair that MoS has to take a view on the need for re-issuing the RFQ so as to ensure that there are no material inconsistencies with decisions taken by the PPPAC in the already issued RFQ. It was also stated that the Project Description should be similar in the bidding documents, i.e., RFQ, RFP and DCA.

6. The PPPAC recommended the proposal for the approval of Competent Authority subject to the following conditions:

- i. Bid documents with the changes recommended by the PPPAC shall be submitted by MoS to the PPPAC members for examination in a timely manner. If it is felt that another meeting of the PPPAC needs to be convened, an appropriate decision will be taken in the matter.
- ii. MoS shall ensure that legal vetting of all the revised documents is undertaken to ensure that there are no discrepancies in the bidding documents (RFQ & RFP) and final DCA.
- iii. MoS to decide whether they need to issue the RFQ again in the light of material inconsistencies in the project description as mentioned in the RFQ, as stated in other bidding documents, and as decided in the current PPPAC meeting.
- iv. MoS may ensure that all the applicable clearances such as environmental etc. required for the project are obtained within the stipulated period of time.
- v. MoS shall obtain prior approval of PPPAC for any change in scope of work or project configuration.
- vi. The entire land (including for non-operational activities) given to the concessionaire should be transferred back to the Authority free of cost after end of the concession period.
- vii. Bidding parameter (Royalty per ton) to be paid by the Concessionaire to the Authority cannot be included as a factor in tariff determination.

7. The meeting ended with vote of thanks to the chair.

Annexure**Record of Discussion of 86th Meeting Public Private Partnership Appraisal Committee held on February 28th, 2019.**

List of Participants:

S.No.	Name	Designation
1.	Shri Subhash Chandra Garg	Secretary (Economic Affairs) – in Chair
2.	Shri Gopal Krishna	Secretary (Ministry of Shipping)
3.	Shri Pravir Pandey	Vice-Chairman, Inland Waterways Authority of India
4.	Shri P.K. Das	Additional Secretary, D/o Expenditure
5.	Shri Rajat Sachar	Senior Economic Adviser, Ministry of Shipping
6.	Dr. Kumar V. Pratap	Joint Secretary (IPF), DEA
7.	Shri S K Saha	Adviser, NITI Aayog
8.	Shri Mukesh Kumar Gupta	Director (PPP), DEA
9.	Shri Chandramani Rout	Director, Ministry of Shipping
10.	Shri Neeraj Rawat	Assistant Legal Adviser, D/o Legal Affairs
11.	Shri Manoj Kumar Madholia	Deputy Director (PPP), DEA
12.	Shri Shubham Goyal	Assistant Director (PPP), DEA