

Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

....

**Empowered Institution (EI) for the Scheme to Support Public Private Partnerships
(PPPs) in Infrastructure**

Review of proposals to be discussed in 22nd Meeting of the EI

Record of Discussion: March 4, 2010.

The Review Meeting to consider the proposals in the 22nd meeting of EI was held on March 4, 2010 under the chairmanship of Joint Secretary, Department of Economic Affairs (DEA). The list of participants is annexed.

2. The Chairman welcomed the participants and was noted that there were two proposals from the State Governments for grant of in-principle approval for Viability Gap Funding (VGF) support.

Proposal of Government of Haryana (GoH):

ii. HVPNL 400 KV Jhajjar Power Transmission Project in Haryana on DBFOT basis.

Proposal of Government of Karnataka (GoK):

iii. Development of SH 132 from Bellary city to Chatra Gudi in Karnataka on DBFOT basis.

3. It was noted that both the above proposals were deviated from the guidelines for the Scheme for Financial Support to PPPs in Infrastructure in respect of obtaining approval of the Empowered Institution (EI) before inviting financial bids. It was indicated that the project proposals may be considered and brought up to the next EI meeting for grant of VGF subject to the Sponsoring Authorities confirming that the issues discussed during the meeting would be resolved and adequate extension of bid due date would be made to facilitate a financial bid response from the bidders.

Agenda Item I: Proposal from Government of Haryana for grant of 'in-principle' approval

4. Representatives of the Government of Haryana (GoH) briefly presented the proposal and intimated that Haryana Vidut Prasaran Nigam Limited (HVPNL), a Government company, has posed a proposal for VGF support for construction of transmission system for evacuation of power from the upcoming Jhajjar-II (2x660 MW) thermal power station, which is scheduled to be commissioned by December, 2011. The proposed transmission project involves 400 kV transmission lines in three spans totalling 100 km and two 400 kV sub-stations at Kubulpur (Rohtak) and Deepalpur (Sonapat). The project documents are based on the Model Transmission Agreement formulated by Planning Commission as a best practice document.

5. The observations and issues thereof of DEA, Planning Commission and Ministry of Power have been presented and discussed. Joint Secretary, (DEA) had raised the issue about financial viability of the project. The project as mentioned in the Memo for a concession period of 25 years with Equity IRR as 12.01% and with equity support as 20% may not seem to be financially viable. To improve the project viability and in view of the framework of provisioning of unitary charges (which would take into account the O&M requirements) *the entire VGF support may be provided as the grant*. Moreover, in order to get competitive bids either the base unitary charges of Rs. 4.50 crore (as this annuity payout covers the components of capital cost and O&M) may be increased. Cash discount for early payment maybe deleted in order to get the proposed equity return of 15.5%¹. In response to that, the representatives of the GoH stated that they would like to go with the same provisions as stipulated in the project documents for bidding at the first instance. Subsequently, in case of poor bidding response, the above mentioned suggestions would be taken into account while undertaking the revised project structuring.

¹ As provided for in the CERC and HERC guidelines

6. It was pointed out that as per Article 3, DTA, concession period is 25 years, which may be extended for another 10 years. However, in the event of extension of concession period, the Agreement does not clearly provide what would be the payment of unitary charges for the extended period. In view of the above, DTA may be reviewed to bring necessary clarity on the mechanism for fixation of tariff for the extension period under Clause 3.2.1 and 37.3.7 respectively. In response, representatives of HVPNL stated that the tariff fixation is based on capital investment. The useful economic life of the transmission assets is 25 years for majority of the equipments. Replacement of equipment after 25th year is not recommended, in view of the fact that most of the equipment as maintained by the Concessionaire would be in good working condition and replacement would mean a major expenditure not warranted. Also, residual value of the equipment is not cause of concern rather the value for purchase of equipments after 25 years, including any technological advancement needed at that time. In case the Concessionaire has to incur huge cost on replacement of equipment(s) after the 25 years, the resultant unitary charges prevalent at that time would be difficult to be estimated with a fair degree of precision at present. Further, as per clause 37.3.7 of the DTA, the provisions of this Agreement shall apply mutatis mutandis to the extended Concession Period hereunder. Therefore, the Concessionaire while bidding would take into account the same unitary charges for the extended period as applicable for the concession period of 25 years.

7. Under clause 27.1 the concessionaire is entitled to third party usage of system capacity in case Authority fails ultimately to make the payment through Letter of Credit (LC) as well as the Escrow Account cover. However, the definition of third party is not clear and specified in the documents. It needs to be defined who shall be the Third party and whether the third party also include long term users of the Authority i.e. DHBVNL & UHBVNL. The representatives of GoH stated that the Concessionaire is the first party and all others are the third party and the same may be clarified in the DTA.

8. Joint Secretary, DEA pointed out that under the DTA in respect of clauses 28.1.1 and 28.1.3, the Authority has no liability towards proceeds of any rentals, deposits, capital receipts or insurance claims taken by the Concessionaire and shared with the Authority in case the Concessionaire has to refund these said proceeds. Therefore, this may become an issue as the Authority would continue transactions with the users/customer of Additional Capacity post termination of the Concessionaire. Thus, in the DTA it may be suitably clarified that the Concessionaire may appropriately adjust such refunds from the revenue share and leave no unattended liability upon termination. The representatives of GoH agreed with the same and confirmed that an addendum to include this shall be issued and shall be intimated to the members of the EI.

9. As per the proposed method of determining Termination Payments under the DTA under clause 37.3.1, it amounts to making payment based on revaluation of fixed asset. However, as per the existing regulations for tariff determination, revaluation of fixed assets is not considered. Thus, it is advisable for HVPNL to ascertain how the Commission will/is likely to treat the termination payment in the ARR for computing the tariff and the quantum of likely loss in the hands of the Authority post termination, if the full payment is not considered for determination of tariff. Joint secretary, DEA expressed that revaluation of assets and adjusted equity may not be allowed by the Regulator in the ARR, as this is a tangible loss to the authority post termination. The representatives of GoH intimated that this would be sorted out with the Regulator.

10. With regard to clause 34.3.4 upon the end of the concession period and no further grant of extension of 10 years, the Authority is liable to pay to the Concessionaire an amount equivalent to 30 times the unitary charges. Clarity with regard to this provision was sought. It was clarified by the representative of GoH that this amount is proposed in view of the salvage value of the proposed transmission system. Thus, the issue stands clarified.

11. Apropos clause 4.1.2, provides for procuring approval of the Commission for payment of the Unitary Charge by the Authority to the Concessionaire in accordance with the provisions of DTA. However, the Authority may have to incur costs/payments for many other items/elements other than the unitary charge viz, compensation in case of extension of concession period, cost of the licensed premises, change of scope, change of transmission specification, etc. Thus, in order to avoid any regulatory risks, it was suggested that the Authority may seek necessary clarification/approval/direction from the regulator for this costs to be treated as pass through while undertaking the calculation of the ARR². The representatives of GoH agreed with the same and confirmed that the same would be intimated to the members of the EI.

12. It was decided that:

12.1. HVPNL would clarify in writing the aforementioned issues to the member of the EI.

12.2. HVPNL to take up the issue of revaluation of asset at the time of termination payment and treatment of various costs to be borne by the authority for pass-through in the ARR with the Regulator. The same shall be clarified to the members of the EI.

12.3. HVPNL would settle all the pending issues; particularly technical in nature with the Ministry of Power before bidding out the project and the same may be incorporated in the DTA and appropriately informed to the members of EI.

12.4. HVPNL may extend the bid due date.

Agenda Item 2: Proposal from Government of Karnataka for grant of 'in-principle' approval.

13. The Government of Karnataka has proposed to develop two/four lane of the State Highway between Bellary to AP border Section of SH-132. The project was

²² Annual Revenue Return

*Review of proposals to be discussed in 22nd Meeting of the EI
Record of Discussion: March 4, 2010.*

scheduled to be considered by the EI in its meeting on December 14, 2009. The agenda item was deferred on account of non-representation of the State Government in the meeting. Subsequently, the State Government sent a revised proposal for consideration by EI which proposes to develop SH-132 to (i) 4-lane divided carriage way from km 1.500 to km 10.000, (ii) 2-lane carriage way from km 10.000 to km 27.170, between Bellary to Andhra Pradesh Border (total 25.670 km) in Karnataka State and Maintenance with Improvement of AP Border to Chatra Gudi Road and construction of Wayside Amenities of the Existing Carriageway/2-lane on the available right of way extending from km 27.170 to km 30.467 from Andhra Pradesh border to Chatra Gudi in the State of Andhra Pradesh on DBFOT/BOT (Toll) basis. The total cost of the project is Rs 176.5.0 crore for a concession period of 30 years including 2 years construction period.

14. Planning Commission pointed out that the current traffic of the proposed project proposal is very low and does not justify for up-gradation of the existing highway to a 4-lane facility and the State Government may restructure the proposal to reduce the scope of work and thereby, the TPC to make the project viable. In response to that, the representatives of the GoK stated that the actual and/or potential traffic on operational of the road is expected to be 10% higher as compared to the current traffic. This is mainly because of Bellary has been growing as one of the industrial hot spot and many big business houses have shown their interest in setting up its business due to recent economic prospectus in the Project Region. Further, the potential traffic is expected to be higher than the actual traffic because of the following factors:

14.1. Bellary is nearby a historic tourist spot- Hampi

14.2. SH-132 would be a main access to the proposed Greenfield airport

14.3. Bellary is reach in Minerals- iron ore, manganese, copper, lead

14.4. Known as steel city in Karnataka and 34 MMT of steel units sanctioned

14.5. State Highway (SH)-132 connects the states of Andhra Pradesh and Karnataka.

15. The representatives of DEA further submitted that although the MCA for State Highways have provided the Compounded Annual Growth Rate (CAGR) of tollable traffic at 5%, the Feasibility Report by simply looking at strategic importance of the project highway have adopted different mode wise block growth rates, which is over and above 5% CAGR. In response, the representatives of the GoK stated that future traffic growth has been estimated keeping in mind the potential growth in local industrial economy and, therefore, the traffic of the project influence area. It was noted that the traffic growth suggested in the feasibility study report need to be established through scientific transport demand assessment methodology. In the absence of a scientific approach, it would be difficult for the prospective bidders to assess the commercial viability of the proposed facility and, therefore, result in not getting competitive bid responses in the market.

16. Joint secretary, DEA mentioned that a section of the project stretch of approximately 3.4 km lies within the administrative jurisdiction of Andhra Pradesh and hence, a State Support Agreement or an undertaking or a MoU with GoAP would be provided to EI in order to avoid any litigation. The representatives of Government of Karnataka intimated that the project proposal is acceptable to GoAP and in-principle approval has been obtained from EE, PWD, GoAP (authority). Further, a letter seeking approval has been sent to Principal Secretary, RDPR, GoAP from Principal Secretary, IDD, GoK.

17. It was noted that the Government of India's Guidelines for PPP projects prescribe a two-stage bid process. However, in case of the instant Project a single stage, two envelope bid process has been adopted. Since, the same is in contravention to the guidelines thus, clarification was sought. The representative of State Government intimated that the same has been adopted on account of the following reasons:

17.1. The State Government is developing a Greenfield airport with private sector participation on the project stretch. The bidding for the airport project is at an advanced stage and the private developer is expected to be selected shortly. To ensure the road connectivity to the airport by the time

the airport construction is completed, it was decided to expedite the tender process for the selection of private party for the instant Project.

17.2. Adequate information relating to the project has been made available to the prospective bidders to facilitate the preparation of their financial proposal. The technical details of the project are standard and not complex in nature. The State Government has provided sufficient time to the bidders to submit their respective bids.

17.3. The RfQ and RfP provided by the GoI have been merged without diluting/changing any of the conditions or procedure laid therein.

18. The representatives of Planning Commission stated that one of the two toll plazas of the instant Project lies within the town limit or municipal area. In such case, the Concessionaire would not be able to collect toll for the road stretch lying within that area. Accordingly, it is recommended that the State Government may propose the toll plazas outside the town limit or municipal area i.e. beyond 5 km as stipulated in the model MCA for State Highways. The State Government of Karnataka expressed their willingness and intimated that the same provision would be incorporated in the Project document and circulated to the members of the EI.

19. It was decided that the project proposal would grant in-principle approval in the next EI meeting subject to:

19.1. MoU signed by GoK with the GoAP in the light of discussion at para 16 above, and

19.2. Proposed change in project structure regarding location of 2nd Toll Plaza beyond a limit of 5 km from the municipal area and as per model MCA.

20. Albeit, both the project proposals were in deviation from the normal procedure of getting approval for VGF under the "Scheme for Financial Support to PPPs in Infrastructure". However, considering the importance of implementing the project proposals on account of the factors set forth in the above discussion, the EI

may provide 'one-time exemption' to both the proposals subject to resolution of the outstanding issues at paras 12 and 19 above.

21. The response and clarifications of HVPNL and GoK to the issues as mentioned above and raised by DEA, Planning Commission and Ministry of Power would be submitted to the next EI for consideration and grant of in-principle approval to the project proposal.

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