F. No. 3/3/2018-PPP
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

North Block, New Delhi
Date: October 5th, 2018

OFFICE MEMORANDUM

Subject: Record of Discussion of 31st Meeting of the Empowered Committee (EC) for the Scheme for Financial Support to PPPs in Infrastructure (Viability Gap Funding Scheme) – reg.

The undersigned is directed to enclose a copy of Record of Discussion of 31st Meeting of the EC under the Scheme for Financial Support to PPPs in Infrastructure held on 19 September, 2018 under the Chairmanship of Secretary (EA) for information and necessary action.

Encl: as above

(Manoj Kumar Madholia)
Deputy Director (PPP)

To,

1. Shri. Amitabh Kant, CEO, NITI Aayog, Yojana Bhawan, New Delhi
2. Shri. Ajay Narayan Jha, Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi
3. Shri Yudhvir Singh Malik, Secretary, Ministry of Road Transport & Highways, New Delhi
4. Shri Avanish Kumar Awasthi, MD&CEO, Uttar Pradesh State Highways Authority

Copy to:

1. Chairman, UPSHA, Lucknow
2. Sr. PPS to Secretary (EA)
3. PPS to JS (IPF)

F. No. 3/3/2018-PPP
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

Record of Discussion of the 31st Meeting of Empowered Committee (EC) for the 'Scheme for Financial Support to Public Private Partnerships in Infrastructure' held on 19 September, 2018

The 31st Meeting of Empowered Committee for the Scheme for Financial Support to Public Private Partnerships in Infrastructure (Viability Gap Funding Scheme) chaired by Secretary (Economic Affairs), was held on 19 September, 2018. The list of participants is *annexed.*

2. The EC noted that Guidelines for VGF Scheme prescribes that VGF up to Rs.100 crore for each project may be sanctioned by the Empowered Institution (EI), proposal for VGF up to Rs.200 crore may be sanctioned by the Empowered Committee (EC), and amounts exceeding Rs.200 crore may be recommended by EC for the approval of Finance Minister.

3. Joint Secretary (IPF) informed that there are two agenda items for the meeting. Agenda item-1 is for 'in-principle' approval of VGF to a road sector project of Uttar Pradesh State Highways Authority (UPSHA), Government of Uttar Pradesh. Agenda item-2 is related to treatment of disbursed VGF in case of terminated projects under the VGF Scheme.

Agenda Item 1: Road sector proposal from UPSHA, Government of Uttar Pradesh for in-principle approval

Proposal from Uttar Pradesh State Highways Authority (UPSHA), for grant of 'In-principle' approval of VGF: Four Laning of Pukhrayan - Ghatampur- Bindaki (Chowdagra) of SH 46 from existing Km 0.000 to existing Km 82.220 (Total Design Length 82.530 Km) in State of Uttar Pradesh through PPP on Design, Build, Finance, Operate and Transfer (DBFOT) Toll Basis

Project Details: Length: 82.530 km; Total Project Cost: Rs.**1136.45 crore**; Concession Period: 20 years including 2.5 years of Construction Period
Major Development Work/ Structures: Major Bridges: 2 Nos; Minor Bridges: 7 Nos; ROBs: 3 Nos; No of Toll Plaza-2 Nos; Bus Bays shelters: 10 Nos; Truck Shelters: 2 Nos; Length of service roads: 25.01 km: Bypass and Partial Cloverleaf interchange: 4.6 km; Major/Minor Junctions: 04 Major/ 92 Minor; Culverts: 69 Nos

4. Joint Secretary (IPF), DEA informed that the captioned proposal was accorded "in principle" approval in the 26th Meeting of EC held on 2 February, 2016 with Total Project Cost (TPC) of Rs.1,293 crore with Concession Period of 19 years {including Construction Period of 2.5 Years} with the condition, *inter-alia,* that Government of Uttar Pradesh (GoUP) shall obtain prior approval of EC for any change in TPC, Scope of Work, or project configuration. Hence, UPSHA has submitted the revised proposal to EC for "in principle" approval with revised TPC of Rs.1136.45 crore with concession period of 20 years {including Construction Period of 2.5 years}.

5. CEO, UPSHA made a short presentation on the revised project and explained that, on the basis of their experience with Yamuna expressway and considering that major accidents happen on rigid pavement, the pavement of SH-46 from Pukhrayan to Bindaki is proposed to be changed from rigid pavement (concrete) to flexible pavement (bitumen).

6. Joint Secretary, IPF apprised the EC that UPSHA has floated the Request for Qualification (RfQ) and received the bids prior to obtaining "in-principle" approval of EC, wheras extant Guidelines of VGF Scheme requires this to be done after obtaining in principle approval. CEO, UPSHA explained that the RfQ has been floated for market testing from potential bidders, especially in view of the fact that there is very little demand for BOT type of projects. Chair agreed to the justification given by UPSHA and hoped that this project provides some fillip to this mode of concessioning road projects.

7. Adviser, NITI Aayog pointed out that, as per the Model Concession Agreement for State Highways (Planning Commission), damages for delay by the Concessionaire in case of failure to fulfill any or all the Conditions Precedent within the stipulated time, has been mentioned as 0.3% of the Performance Security for each day's delay subject to a maximum amount equal to the Bid Security. However, in the Draft Concession Agreement (DCA) submitted by UPSHA (clause 4.3), the same has been changed to 0.2% of the Performance Security for each day's delay subject to maximum of 20% of the Performance Security. Further, as per DCA (clause 17.8.1), maintenance obligations have been prescribed only in case of actual traffic exceeding the designed capacity. On these two issues, Adviser, NITI Aayog, suggested that these clauses should be made consistent with Model Concession Agreement for State Highways (Planning Commission). UPSHA indicated willingness to consider these changes. Chair advised UPSHA to consider incorporating the suggestions in DCA.

8. Additional Secretary, Dept. of Expenditure (DoE) highlighted the issue of land acquisition and rehabilitation for the project. On this, CEO, UPSHA clarified that the existing carriageway is two-lanes with paved shoulders, which is proposed to be upgraded to four-lanes with paved shoulders and Right of Way for more than 80% of land required for the project is already in possession of Authority and process for acquiring remaining small patches of land is underway.

9. Superintending Engineer (SE), MoRTH enquired whether there is any provision for capacity augmentation in the project. In response, CEO, UPSHA clarified that, no such provision is envisaged in the project. JS (IPF) also pointed out that projected traffic will reach the design capacity of four lane highway of 60,000 Passenger Car Units {PCUs} in 17 years i.e. by 2035. Therefore, Concession Period should be restricted to 17 years given that users would be paying toll on the project and their satisfaction is likely to go down if the highway gets congested. On this, CEO, UPSHA stated that, in present scenario, it is difficult to attract private investments in PPP projects due to issues of financial viability and any reduction in concession period will increase the VGF component for the project. He also highlighted that there is a provision in DCA itself, that in case of any variation in the traffic growth, concession period will be adjusted accordingly. Recognizing that projections for such long term are only estimates and can vary widely in practice, Chair agreed that the proposed Concession Period of 20 years may be allowed to promote private investment in road projects, to create an enabling environment for PPPs, and to improve the financial viability of the project, .

10. SE, MoRTH highlighted that some sections of the stretch has speed restrictions instead of the design speed of 100 km/hr. CEO, UPSHA clarified that since the highway passes through some dense habitations, it is prudent to have speed restrictions on few stretches to ensure safety.

11. All EC members agreed to recommend the project for approval of the Finance Minister to grant "in-principle" approval to the said project subject to the following conditions;

a. UPSHA will consider making modifications in DCA as suggested by NITI Aayog;
b. UPSHA shall obtain required clearances before commencing work on the project site;
c. UPSHA shall obtain prior approval of EC for any change in TPC, scope of work or project configuration as noted above;
d. UPSHA shall circulate the final documents to the EC members for record.

Agenda Item 2: Treatment of disbursed VGF in case of terminated projects under VGF Scheme.

12. Joint Secretary (IPF), DEA made a short presentation to the EC on the agenda item. He explained that it was observed in a few cases that projects have been terminated after release of VGF, and later on Project Authority has implemented those projects under Engineering Procurement & Construction (EPC) mode. In case of Seoni-Katangi road project of Madhya Pradesh, EI, in its 79th Meeting held on 23.11.2017, decided that JS (IPF) may convene a meeting with stakeholders for discussing project-specific issues. This meeting was held on 9.7.2018 and it was decided that the issue of treatment of disbursed VGF in terminated projects may be put up to EC for a decision.

13. Joint Secretary (IPF), DEA further highlighted the following decision points:

i) Whether VGF should be recovered or not given that very often the VGF is embedded in the unfinished terminated project;

ii) If VGF is to be recovered, from whom should it be recovered, i.e., Project Authority or Concessionaire?

iii) Whether VGF should be disbursed in proportion of Debt Disbursed, Physical Progress and Financial Progress, whichever is lower?

iv) Whether the Quarterly Progress Report of Lead Financial Institution {giving the Physical and Financial Progress of the Project} should be countersigned by the Project Authority?

14. Adviser, NITI Aayog explained that in the Model Concession Agreement (MCA) for State Highways, in Concessionaire's event of default during Construction Stage, Authority is not liable to pay anything to Concessionaire whereas after achieving Commercial Operation Date (COD), Authority is liable to pay 90% of Debt Due. On comparison with the MCA for State Highways, it was found that the provision as stated above regarding the pre-COD liability of the Authority has been slightly amended.

15. After detailed deliberations, it was decided that the same principle as stated in para 14 may be used for treatment of disbursed VGF in case of terminated projects. On the basis of this principle, for Projects terminated before COD, the VGF may not be recovered from the Authority as it expected to be embedded in the unfinished terminated project. However, if the project is terminated after achieving COD and the project is taken over by Project Authority, then 90% VGF may be payable by the Authority to Ministry of Finance.

16. Given that the provision in para 15 is a modification of the existing Scheme for Financial Support to Public Private Partnerships in Infrastructure, and an EFC Note is in process for amending the Scheme, para 15 may be suitably incorporated in the EFC Note.

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Annexure

List of Participants

1. Department of Economic Affairs, Ministry of Finance

i. Shri Subhash Chandra Garg, Secretary, Economic Affairs (In Chair)
ii. Dr. Kumar V Pratap, Joint Secretary (IPF)
iii. Shri Manoj Kumar Madholia, Deputy Director (PPP)
iv. Shri Arun Dewan, Officer on Special Duty (OSD), (PPP)
v. Shri Shubham Goyal, Assistant Director (PPP)

2. Department of Expenditure, Ministry of Finance

vi. Shri Rajeev Ranjan, Additional Secretary

3. NITI Aayog

vii. Shri S. K. Saha, Adviser (PAMD)

4. Ministry of Road Transport and Highways (MoRTH)

viii. Shri Narendra Sharma, Superintending Engineer

5. Uttar Pradesh State Highways Authority (UPSHA)

ix. Shri Avanish Kumar Awasthi, CEO & MD
x. Shri Priya Ranjan Kumar, Member (Finance)
xi. Shri Komal Prasad, Adviser (Technical)
xii. Shri Abhishek Kumar Singh, Manager (Technical)