Government of India
Ministry of Finance
Department of Economic Affairs

Public Private Partnership Appraisal Committee

28th meeting on October 16, 2009

Record Note of Discussion

The 28th meeting of the Public Private Partnership Appraisal Committee, chaired by Finance Secretary was held on October 16, 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, sections of NHDP Phase III and V on BoT (Toll) basis.

Agenda Item 1: Proposals from Ministry of Road Transport and Highways for grant of Final Approval on BOT (Annuity) basis:

i. **Rehabilitation, strengthening of Four laning of Udhampur 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-Udhampur 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**

3. Joint Secretary, DEA indicated that the 232 km stretch from Jammu to Srinagar, part of the North-South corridor, proposed to be divided into six sub projects and bid out on BoT (Annuity) basis for a concession period of 20 years were earlier considered in the 27th meeting of the PPPAC held on September 1, 2009. The decision on the proposals was deferred for closer examination of the issues raised by Planning Commission and Department of Expenditure by Ministry of Road Transport and Highways. The issues were recapitulated:

3.1 Whether the resource envelop of NHAI would sustain the likely annuity payouts of Rs 1,672 crore per annum; working out to approximately Rs. 26,919 crore over the proposed concession period of 20 years.

3.2 The B.K. Chaturvedi Committee had recommended that the Government would provide additional budgetary resources for project stretches in J&K and SARDP-NE. The recommendations of the Committee were under consideration for approval. However, it needed confirmation whether the additional budgetary resources would be adequate to cover the cost of development of all the identified stretches in J&K and SARDP-NE.

3.3 Whether there is actual need for four laning of the stretches. The option of developing the stretches as two lane with paved shoulder could be explored.

3.4 MoRTH may examine the sub-stretches to see whether there was possibility of revisiting the proposed cost of the stretches or to contain the cost by two-laning portions where traffic did not justify immediate four laning.

4. Accordingly, MoRTH was requested to confirm the project costs and availability of outlay within the revised Financing Plan for consideration of the projects by the PPPAC. Joint Secretary DEA informed that NHAI, in their response, had clarified that:

4.1 **Budget provision for undertaking Annuity mode of implementation of the project:** The B.K.Chaturvedi Committee in its report has recommended additional budgetary support of Rs. 39,329 crore for J&K and SARDP-NE projects. Out of which provision of annuity payment of Rs. 26,599 crore has been made for J&K projects; along with the provision of Rs. 9,717 crore of annuity payment and Rs. 3,013 crore for EPC payment for SARDP-NE projects. As per the financial analysis, total expected annuity outgo for the J&K project stretches was Rs 25,630.38 crore. Hence, the exact cost of projects has been incorporated into the revised financing plan and resources would be available with NHAI for implementing the project on BOT (Annuity) basis.

4.2 **Mode of implementation of projects:** CCEA in the meeting held on 26.02.2009 has approved up-gradation of 264 km. of NH-1A in the State of Jammu and Kashmir under NHDP Phase-II on BOT (Annuity) mode at the estimated cost of Rs. 8,436 crore and also authorised MoRTH to take up the projects on EPC basis in case the BOT (Annuity) mode was unsuccessful. Therefore, the project may be considered for four- laning.

4.3 **Justification of four laning:** The traffic on the stretches was currently almost double the capacity for two lane highway. Hence, the four laning was immediately required for providing comfort to road users as well as for meeting safety considerations required for hilly terrain. Furthermore, reduction in traffic even upto 40 percent due to construction of the proposed railway line would still justify the four laning of these projects. At present the road stretch remains closed for many days and all links to the valley are disconnected in winter due to snowfall. The proposed Qazigund–Banihal and Chennai–Nashri projects provide for the tunnels so that the stretch remains an all-weather road. The construction of the proposed stretch would also reduce the distance by 48 km, through tunnels, which will result in saving on account of vehicle operating cost by approximately Rs. 35 lakh per day. Considering all these factors, four laning for these project stretches was justified.

4.4 **Revision of Costs of the project stretches:** The cost of Jammu–Udhampur and Srinagar-Banihal sections had been revised from Rs. 1,939 crore to Rs. 1,813.76 crore and Rs. 1,165.82 crore to Rs. 1,100. 70 crore respectively. There was no further scope of reduction of cost of the projects without compromising the safety aspects required for hilly terrain. The costs of these projects were on the higher side on account of the hilly terrain which required cutting of hills, protection work, higher cost of structures and provision of tunnels to construct the stretch as an all weather road.

4.5 **Revision of Project documents:** The project DCAs had been modified by incorporating observations of Planning Commission and the modified DCA had been circulated to the members of the PPPAC. However, Planning Commission's observations regarding adopting a hybrid model (with both VGF and Annuity payments and tolling by Concessionaire) and linking Annuity Payment to inflation had not been incorporated.

5. Adviser, Planning Commission stated that the recommendation of Planning Commission was that the six four-laning road projects may be recommended for approval on EPC mode, given the terrain and local circumstances. In case it is decided to consider the J & K projects on annuity mode, the reservations expressed by Planning Commission in the 27th meeting of the PPPAC held on September 1, 2009 would remain. In particular, following aspects may be considered before implementation of this project on annuity mode:

5.1 According to the B. K. Chaturvedi Committee recommendations, these projects are to be developed with budgetary allocations. Hence, the projects should be considered only after budgetary allocations are firmed up by Department of Expenditure and Planning Commission.

5.2 The annual outflow of annuity payments on award of these projects would be approximately Rs. 1,672 crore. NHAI had already committed annuity payments of about Rs. 3,000 crore per annum for projects bid out and/or approved. In case the J & K projects are also taken up on annuity mode, it would significantly reduce the size of the NHDP programme. MoRTH should fix annuity limit as percentage of cess and take approval of CCEA before any further annuity projects are considered.

5.3 There is no approved MCA for annuity projects. Hence, the detailed comments of the Planning Commission on the DCA would need to be addressed and approved by PPPAC.

5.4 The traffic for these projects does not justify four-laning. Moreover, a rail line is being constructed up to Srinagar which was likely to restrict traffic further. Hence, these projects should be considered for two-laning. Some of the elements of the proposed project could be curtailed or phased out in order to reduce costs.

5.5 The DCA for these projects suffered from a number of infirmities. Planning Commission had pointed out these infirmities in the appraisal notes. MoRTH has made some corrections in the DCAs; however, the DCAs continued to suffer from infirmities which would need to be addressed before the projects are bid out.

6. Joint Secretary, Department of Expenditure stated that the Department had concerns that the proposed project cost of the six projects and the possible annuity payments would not leave adequate resources for undertaking/ completing other projects proposed by NHAI with budgetary support. There was a need for re-look at the requirements of the projects. Hence, DoE did not support the proposal in its current form.

7. Representative of NHAI pointed out that the Organisation had initially developed the projects for bidding in the EPC mode; some of the packages were bid out; however, the bid response was high and it was decided to re-bid the stretches in the EPC mode. Subsequently, in February 2009, the CCEA had approved up-gradation of 264 km of NH-1A in Jammu and Kashmir under NHDP Phase-II with BoT (Annuity) as the mode of implementation of the projects at the estimated cost of Rs. 8,436 crore and also authorised MoRTH to take up the projects on EPC basis in case, the response on BOT (Annuity) mode was unsuccessful. Accordingly, the projects were developed for bidding in the Annuity framework. Therefore, it would be appropriate that based on the CCEA approval, the projects were first bid out in BoT (Annuity) mode; in case the projects do not elicit a response, or the bid response was higher than levels prescribed by the NHAI Board, NHAI would process for implementation of the projects on the EPC mode. It was reiterated that the IRC guidelines prescribe that the capacity for 2 laned roads in hilly and plain terrain should be 7,000 PCUs and 15,000 PCUs respectively. The proposed stretches had current traffic levels between 12,500 to 24,500 PCUs, justifying immediate four laning of the project. Hence, the projects could be cleared for four-laning on BoT (Annuity) framework.

8. Joint Secretary, DEA noted that the traffic threshold for four laning of the highway had been breached for the entire 264 km stretch and that the CCEA had considered and approved four laning of the proposed stretch on BOT (Annuity) modality. Hence, the three outstanding concerns of the members of the PPPAC pertained to the project Concession agreements, cost of the projects and availability of resources to execute the projects. The observation that the proposed MCA for BoT (Annuity) projects, pending final approval of the Cabinet, was not to be considered as duly approved MCA, was a procedural issue. The only 'duly approved MCA' as per the laid down procedure was that of the port sector. 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, which is otherwise prescribed for new sectors engaging in PPPs. Therefore, projects based on the proposed MCA could be considered directly for grant of final approval. Concerns on whether the projects were "over-structured" would be validated or put to rest based on the nature of response received for the projects. In case, on bidding, the projects received a bid response which was within the levels prescribed by the NHAI Board, the projects could be implemented in the BoT (Annuity) modality, failing which the projects could be considered for the EPC mode. Since the cost of the proposed scope of work was taken into account while recommending budgetary support for the projects by the B.K. Chaturvedi Committee, the projects could be considered for grant of final approval, subject to availability of resources with NHAI to implement the projects in the proposed modality. Chairman, PPPAC endorsed the view.

9. Secretary, RTH pointed out that that the said projects were part of NHDP and their requirement of resources was also taken into account during earlier Financing Plan. Hence, irrespective of the final decision on the revised Financing Plan, the projects could be considered for clearance. Furthermore, the NHAI would be able to execute the same within the ceiling established for Annuity payments, authorised by the Committee headed by Secretary, RTH. With regard to the observations of Planning Commission on the project DCAs, most of the suggestions had been incorporated; the outstanding observations would be revisited and addressed, excepting those which espoused a hybrid Annuity model or linking Annuity payment to inflation. Accordingly, the projects may be considered for grant of final approval.

10. In view of the above, the projects were granted final approval for the proposed scope of work for implementation in the BoT (Annuity) mode.

(Action: MoRTH)

Agenda Item 2: Proposals from Ministry of Road Transport and Highways for grant of Final Approval on BOT (Toll) basis:

i. **Six laning of NH 4 from Tumkur to Chitradurga in Karnataka under NHDP Phase V on BOT (Toll) on DBFO pattern**
ii. **Four laning of UP/Haryana border-Yamunanagar-Saha-Burwala-Panchkula section of NH 73 in the State of Haryana under NHDP Phase III**

11. It was noted that NHAI had addressed and responded to the observation of Planning Commission and DEA in the Appraisal Notes in respect of the two projects.

12. Representative of Planning Commission expressed reservation about allowing grant up to 40 percent of Total Project Cost (TPC) during the construction period, since the MCA provisions only allows up to 20 percent of TPC as Equity Support and remaining 20 percent as O&M support (clause 25.22 of MCA). Allowing grant up to 40 percent of Total Project Cost during construction period may expose NHAI to undue risks. It was pointed out that the DCAs currently provided that the equity support would be equal to 40 percent of TPC or "twice the equity during construction period". It was suggested that the provision of MCA under clause 25.2.2 which states "but in no case greater than the Equity" may be retained. It was stated that allowing equity support of 40 percent of the TPC during construction implied that the concessionaire would only spend 40 percent of TPC on construction and yet get the benefit of another 20 percent by way of IDC etc. It would imply that Government of India is allowing about 50 percent of the construction cost by way of financing changes, which would be inappropriate. Further, IIFCL may also give about 20 percent of TPC as loans. As a result, the stake of the Concessionaire would become low and by some padding of costs or lowering of construction quality, the Concessionaire could undertake a project with a low stake, thus altering the entire risk matrix on which the structure rests. It was suggested that suitable safeguards should be built into the DCA and duly approved by PPPAC in order to protect public interest. Furthermore, MoRTH had stated in the PPPAC Memorandum that four-laning of Yamunanagar-Panchkula project would be viable at a VGF of 15 percent. Therefore, in case, the VGF sought after the bidding is more than 15 percent, then the NHAI Board should satisfy itself with the reasonableness of the bid to ensure that cartelisation does not take place.

13. Representative of NHAI stated that the B.K. Chaturvedi Committee had considered the proposed formulation of the Article 25 and recommended a formulation after taking into account observations of various entities, including Planning Commission. Hence the formulation of Article 25 proposed in the project DCAs, based on the recommendations of the Chaturvedi Committee, may be considered for approval. Further the Cabinet had approved VGF upto 40 percent for NHDP projects, which has been restricted to 10 percent for NHDP Phase-V projects. The projects may, therefore, be granted approval, subject to the bids being within these approved levels.

14. The projects were granted final approval subject to NHAI undertaking corrections in the Schedules of the project DCAs in accordance with the observations of Planning Commission in the appraisal notes in respect of the proposals.

(Action: MoRTH)

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

Annex

Ministry of Finance
Department of Economic Affairs
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Public Private Partnership Appraisal Committee (PPPAC)
28th Meeting on October 16, 2009

List of Participants

I. Department of Economic Affairs

i. Shri Ashok Chawla, Finance Secretary (In Chair)
ii. Shri Govind Mohan, Joint Secretary
iii. Shri P.K. Mishra, Director
iv. Ms. Aparna Bhatia, Director

II. Department of Expenditure

v. Ms. Meena Agarwal, Joint Secretary (PF II)

III. Planning Commission

vi. Shri G. Haldea, Adviser to Dy. Chairman
vii. Shri Ravi Mittal, Adviser
viii. Shri Amitabha Ray, Deputy Adviser

IV. Ministry of Law

ix. Ms. Poonam Suri, Asstt. Legal Adviser

V. Department of Road Transport & Highways

x. Shri Brahm Dutt, Secretary
xi. Shri P.K. Tripathi, Joint Secretary
xii. Shri Nirmal Jit Singh, Director General

VI. National Highways Authority of India

xiii. Shri Brijeshwar Singh, Chairman
xiv. Shri S.K. Puri, Member (Projects)
xv. Shri Subhash Patel, Member Finance
xvi. Shri U.C. Katara
xvii. Shri Akil Ahmad
xviii. Shri S.K. Nirmal