

F. No. 2/8/2019-PPP  
Government of India  
Ministry Of Finance  
Department of Economic Affairs  
PPP Cell

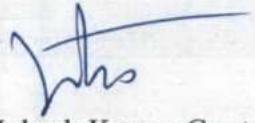
North Block, New Delhi  
Dated 9th November, 2020

OFFICE MEMORANDUM

**Subject: Record of Discussion of 97<sup>th</sup> meeting of Public Private Partnership Appraisal Committee (PPPAC) in Passenger Train Operations project under PPP mode.**

The undersigned is directed to forward the Record of Discussion of 97<sup>th</sup> meeting of Public Private Partnership Appraisal Committee (PPPAC) in Passenger Train Operations Project under chairmanship of the Secretary (EA), held on 29.10.2020 in Room No.131-A, North Block, New Delhi through Video Conference (VC) for information and necessary action

**Encl: As above**

  
(Mukesh Kumar Gupta)  
Director (PPP)

To,

1. Chairman, Railway Board, Rail Bhawan, New Delhi
2. CEO, NITI Aayog, Yojana Bhawan, New Delhi
3. Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi
4. Secretary, D/o. Legal Affairs, Shastri Bhawan, New Delhi

Copy to :-

1. Sr. PPS to Secretary, D/o. Economic Affairs, North Block, New Delhi
2. PPS to Joint Secretary, IPF Division, DEA

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**Record Note of Discussions of 97<sup>th</sup> Meeting of the PPPAC**

1. The 97<sup>th</sup> meeting of PPPAC chaired by Secretary, Economic Affairs, was held on 29<sup>th</sup> October, 2020 for 'Final Approval' of PPP in Passenger Train Operations project. List of participants placed at the Annexure hereto.

2. On behalf of the Chair, Dir (PPP) welcomed the participants and requested MoR to begin with their presentation. OSD/Private Train Project Cell, Railway Board made a presentation on the broad contours of the project, status of RFQ and issues for discussion. He informed the PPPAC about the overwhelming response to the RFQs - with a total of 120 applications for 12 clusters/projects.

3. The following issues were discussed during the meeting:

a. **Haulage Charge:** Both DEA and DoE, in their comments on the project proposal, had commented on the haulage charges fixed at Rs. 512.31 being less than that of other major trains – IRCTC Tejas. MoR apprised the PPPAC that Indian Railways works on distributed costs and not on marginal costing. And that it was considered to be onerous to load the overall costs on to the private operators. It was also noted that the trains as provided to IRCTC are by virtue of a lease model, where haulage charges are an all-inclusive charge comprising of lease rental of the rakes, energy charges, and no revenue share being paid to MoR. Further, there is no major capital investment by IRCTC.

MoR informed the PPPAC that this issue was discussed in detail in 2<sup>nd</sup> Group of Secretaries (GoS) held on 14.11.2019 taking into consideration the above and the



expected huge investment from the private partners and post detailed deliberation (*inter alia* taking into account the above) it was determined that Haulage Charges for this Private Trains project should exclude costs relating to 'Central Charges' and 'loss of goods train paths' (and include the remaining items of Terminal, Traction (as per actual), Transportation, Track Maintenance and Signalling costs, Overheads @ 25%). It was also noted that higher Haulage Charges adding to private partner's cost would also adversely affect the bids – leading to conservative revenue share bids.

PPPAC agreed with the views of MoR.

b. **Reserve Price:** Both DEA and DoE suggested that MoR fix reserve price for each cluster. PPPAC was apprised that the fixing of reserve price was considered/discussed within MoR and was also deliberated upon in the 4<sup>th</sup> GOS meeting. During all these discussions, it was noted that given that it is a first of its kind project, there is no reliable basis for arriving at this reserve price (i.e. percentage of revenue share) – with different routes included in each project, it would be complex to arrive at a reserve price for all such routes and determining if the reserve price so arrived at is accurately reflective of the market dynamics for that route. The foregoing is further rendered ineffective because of the bid parameter being revenue share and there being no mechanism for determining all the possible revenues at this point. Accordingly, the process will not enable efficient price discovery. In view of the above, and practice followed in PPP projects in other sectors, GoS in their 4<sup>th</sup> meeting determined that it would be prudent to leave the bids to the market forces, and the highest revenue share for each of the clusters be determined through competition.

M/O&BD-Railway Board stated that MOR would go by the advice of PPPAC on this matter. JS/DEA enquired whether Reserve Price be disclosed beforehand or before opening the respective bids. MoR informed that no Reserve price shall be calculated and disclosed at any stage. Further, Adviser NITI Aayog informed PPPAC that by fixing a Reserve Price, bids may get rejected and a major reform may not get carried out. It was also suggested that as these are PPP projects in which investment is being made by the Private concessionaire with revenue to the Railways; failure of bids





because of arbitrary reserve price fixation will result into deemed loss of revenue to the Railways.

PPPAC, taking note all of the above, decided that the price discovery for the clusters in the project to be done through market forces and there need not be a pre-determined reserve price.

c. **Clause 5.3 of DCA: Obligation Relating to Change in Ownership:**  
NITI Aayog in its comments on documents circulated for Final Approval had suggested that the clause should allow for the Lead Member to subscribe to the Equity of the SPV created for the concession either directly or through a wholly owned subsidiary of the Lead Member, which is incorporated in India. As per NITI Aayog, this is an enabling provision which gives flexibility to international players to participate in the bidding process and incorporate an Indian subsidiary, if and when selected. That this has been regarded as an apposite provision particularly in concessions pertaining to trains, and was included in the concession agreements of locomotive manufacturing units of Madhepura and Marhowrah – approved by the Cabinet. Wherein while allowing subscription to the Equity of the SPV either directly or through a wholly owned subsidiary, it was required that the Lead Member, at all times, holds not less than 85% of the total paid and subscribed share capital of such subsidiary.

MoR expressed its view that since this stipulation was not part of RFQ, any change at this stage would entail post RFQ change. To this, Adviser NITI Aayog informed the PPPAC that the provision pertains to matter addressed in the RfP/concession agreement and is typically included in the concession agreement (as was also the case in the aforementioned agreements of locomotive manufacturing units of Madhepura and Marhowrah). Therefore, it is not a post RfQ change. PPPAC noted that it being an enabling provision, and an established precedent, needs to be considered for this project, as the same would enable ease of participation thereby enhancing competition. Accordingly, provision as in the Madhepura and Marhowrah Agreements be included herein by MoR.



d. **Article 9- Performance Security:** NITI Aayog had, in its comments on the Bid Documents, stated that requiring the Concessionaire to keep valid the performance security throughout the concession period is a financially onerous requirement that would add to the cost of the concessionaire. It is suggested that instead, as is the prudent practice, the performance security should be for up till the COD, and once all the trains are deployed, the DCA should provide for a deemed performance security. This deemed performance security would be a first and exclusive charge on an equivalent balance in the escrow account and the Government would have the right to appropriate the relevant amounts as damages for Concessionaire Default from the Deemed Performance Security.

Member Finance, Railways stated that there may be situations when enough amount is not available in the escrow account and moreover, the water fall arrangement from escrow account does not allow withdrawal towards damages before statutory charges. MoR also suggested that Performance Security be kept at-least for 5 years after COD. Further, JS/DEA informed the PPPAC that creating a First and Exclusive charge on the Escrow Account may not be legally tenable as the same is usually bestowed in favour of statutory dues such as applicable taxes etc.

Adviser NITI Aayog replied that in such a case, instead of first charge, the charge on account of deemed performance security may be suitably kept in the order of precedence in the waterfall mechanism of the Escrow Account.

PPPAC noted that this was a first of such type of projects and a higher performance security fee may adversely impact its success, and accordingly agreed that performance security in the form of bank guarantee shall be maintained upto COD and DCA to have provision for Deemed performance Security for the remaining concession period. MoR was directed to work out the waterfall mechanism of the Escrow Account accordingly.

e. **Clause 15.1 Provisional Commercial Operation Date (PCOD):** NITI Aayog suggested that requirement of Certification of the Safety Certification Officer, Crew and Government staff for the Trains before PCOD needs to be reviewed. The inclusion of the undefined expression "Government staff" renders the



clause ambiguous and lends uncertainty to the declaration of PCOD. MoR submitted that the clause has been reviewed and certification of only Railway Safety Certification Officer, Crew (driver and guard) is required before PCOD, and that the expression "Government Staff" has been removed therefrom.

PPPAC noted it.

f. **Article 17 - Operation and Maintenance:** The extant provision stipulates that a train shall be taken to maintenance depot before 31 days or travel 40,000 km, whichever is later. However, if a Train has not travelled 40,000 km within 35 (thirty five) days from such Scheduled Maintenance, then the Scheduled Maintenance to be done no later than 36th (thirty sixth) day from date of immediately preceding Scheduled Maintenance.

It was deliberated if there is need for the upper cap of 35 days - after which a train is required to go to the Maintenance Depot irrespective of the kilometres travelled. MoR submitted that it is a safety requirement that there be an upper limit on number of days after which a train is to mandatorily go for scheduled maintenance. The same principle is being followed by MoR for Indian Railway trains as well.

PPPAC accepted the views of MoR on technical and safety grounds.

g. **Clause 17.4 Spare Trains of DCA:** NITI Aayog suggested that the Government should not be obligated to provide the stabling space for Spare Trains, the same should be required to be parked in the Maintenance Depot.

MoR informed that sometimes spare train will have to be parked at station as per the train link. It will not be operationally feasible for the private partner to run trains without some stabling space at stations.

PPPAC accepted the views of MoR on technical grounds.





h. **Clause 17.15.1 – Washing Lines of DCA:** As per extant provision, the trains will go to washing lines after 7000 kilometres of running. NITI Aayog has suggested to reduce the said distance to a more appropriate 3000 kilometres to ensure proper cleaning of train.

MoR informed that at present Rajdhani/Shatabdi types of trains are required to go to washing line after 4,000 km and Vande Bharat after 5,000 KM. In line with the prevailing practice, MoR proposed to provide washing line to private trains after 5,000 km. However, arrangement of evacuation of toilets to be made for after each service or even earlier, if required.

PPPAC agreed with the views of MoR.

i. **Clause 18.3.5 Safety Certification of Trains after maintenance of DCA:** NITI Aayog suggested that since the concessionaire is required to issue Travel Worthiness Certificate before start of each commercial run and there is to be a safety certification by the Safety Certification Officer before each Operation of each Train, the need of Safety Certification of Train by Railways after each maintenance in terms of clause 18.3.5 be relooked into.

MoR proposed that the provision can be revised to state that MoR reserves the right of such inspection (after scheduled maintenance) either through Safety Certification Officer or through independent assessor to ensure compliance of all safety requirements.

PPPAC agreed with MoR's submission and required MoR to suitably define the term 'independent assessor in the DCA so as to avoid ambiguities in interpretation.

j. **Clause 24.5.1 Haulage Charges:** As per extant provisions, the concessionaire is required to pay haulage charges for commercial as well as non-commercial run as per odometer reading of the train. NITI Aayog suggested that haulage charges should not be collected for non-commercial runs, as in line with the principle behind fixation of haulage charges, it should be charged from train runs generating revenue.



MoR, agreeing with the above, stated that haulage charges for scheduled non-commercial run to maintenance depot/stabling as per train operations plan shall not be charged. However, haulage charge shall be charged for un-scheduled non-commercial runs arising out of Failure of Trains *en route*.

PPPAC agreed with the MoR's submission. Provision(s) in DCA to be accordingly revised.

k. **Clause 24.5.4 Haulage Charge:** As per extant provision, the haulage charge for a train longer than 384 m shall increase in proportion to the length of the train. NITI Aayog has suggested that since the variable element of energy consumption and charges thereof are to be calculated and paid separately, the haulage charges should not be increased in proportion to the length. And if provided for on pro-rata basis for increase in length, the same principle should also be extended to decrease in length.

MoR stated that the haulage charges have been worked out on Vehicle KM basis. The cost of maintenance of track, OHE, watering & cleaning of the train depends upon the length of the train.

PPPAC accepted MoR's submission in this regard.

PPPAC then deliberated on the issue of payment of haulage charges in case of route(s) having poor occupancy, and the Concessionaire's right to suspend or permanently terminate operations on that route. It was noted that as per extant provisions, the concessionaire will be required to pay haulage charges irrespective of the occupancy.

M/O&BD-Railway Board stated that since this was not stipulated in the DCA shared with the applicants before RFQ, this change would entail post RFQ change and is thus not advisable. In response to which, it was highlighted by NITI Aayog that it was only the draft DCA which was shared with the RfQ and that, too, for discussion purposes.





That the DCA shared included a detailed disclaimer *inter alia* stating that “*information contained herein is neither exhaustive nor final and is subject to change*”. And that the DCA for the purpose of bidding is anyway shared with the RfP, which is also the case here. Accordingly, this would not amount to a post RfQ change, much like all the other changes made in the DCA post the said sharing of the document.

PED, MoR informed that the prospective bidders for the project had been duly informed beforehand that no curtailment of haulage charges would be considered and a total of 120 bids for the 12 clusters have been received. Also, the identified routes for the project are commercially viable routes where there is maximum demand and such revision in terms would entail going backwards in the already completed bid process.

It was discussed that this provision is an onerous provision that would affect the viability of the project (and even the overall biddability of the projects). And the same needs to be revised to provide for a balanced formulation, which accords necessary protection to the private partner.

NITI Aayog and MoR suggested that to provide comfort to the bidders/private partners on this account, given the long concession period and the routes being pre-decided, DCA needs to provide an appropriate mitigation mechanism as under:

*After 2 years of commencement of commercial operations on a route, if the capacity utilisation of the Train is less than 50% in the previous 12 months, the Concessionaire shall have the right to surrender train operation on that path (i.e. for the entire path including extensions, if any) permanently. In which case, no haulage charges shall be payable for such surrendered operation. The Authority shall have the right to utilise the surrendered path for operations of its trains. It is clarified that, at any given time, Concessionaire can only surrender operations on 30% of the total number of paths allowed in the concession agreement. It is further clarified that the Authority shall not allot any alternate path to the Concessionaire in lieu of such surrendered path(s).*

*The Capacity Utilization is defined in Clause 3.2.1 (b) of this Agreement.*



1. **Clause 32.3.8 Termination on expiry of the Concession Agreement:**

As per extant provision, no termination payment on account of maintenance depot shall be due to the concessionaire on expiry of the Concession Agreement by the efflux of time. NITI Aayog has suggested that, in line with the prudent practice, for assets installed in the maintenance depot after 15<sup>th</sup> anniversary of the appointed date with the prior written consent of the Government, a termination payment equal to 80% (eighty percent) of the Adjusted Depreciated Value of such assets and equipment should be paid to the Concessionaire.

MoR stated that maintenance depot will not be of any use for railways as trains will be taken back by the concessionaire and the cost of maintenance depot is just around 5% of the cost of the project.

PPPAC agreed with the views of MoR.

4. PPPAC enquired how MoR will monitor Gross Revenue collected by the Concessionaire from non-fare sources. MoR stated that with GST regime in place, the revenue can be assessed from GST payments. It was advised that Railways should formulate a robust system to monitor Gross Revenue.

5. JS/DEA suggested that signing of Substitution Agreement and Financial Closure should also be part of the conditions precedent in clause 4.1.3 of DCA.

MoR stated that as the leasing is also an option available to the concessionaire for procuring the trains, the same have been kept out of Conditions Precedent; however, execution of Substitution Agreement will be a requirement, to be appropriately captured in the DCA.

PPPAC agreed with views of MoR.

6. JS/DEA suggested that the performance security should be 5% of the Estimated project cost instead of 3%, as is the case in other MCAs.

MoR stated that private train operation is a new area for PPP in India, the Performance Security has been kept at 3% (at a lower rate as compared to norm of 5%) to encourage participation of private entities.

PPPAC agreed with the views of MoR.

7. JS/DEA asked if trains are procured through leasing model, how termination payment would be arrived at.

MoR informed that in case of prior termination of the concession, the trains, even if procured through leasing model, will become property of Railways and the termination payment will be based on the Adjusted Depreciated Value of the trains calculated on the basis of contract between the lessor and the lessee and using SLM Method of Depreciation. MoR also stated that the lease agreement between the lessor and the concessionaire would also include appropriate stipulations with regard to the above.

Adviser NITI Aayog stated this provision needs to be properly captured in the Concession Agreement as well,

It was agreed by the PPPAC.

8. JS/DoE asked how MoR will operate these trains considering heavy congestion on present railway network.

MoR informed that the private trains are likely to be introduced by early 2024. Both East and West Dedicated Freight Corridors are likely to be commissioned by 2022 and adequate capacity will be generated after that to operate these private trains.

9. JS/DoE stated that in case existing maintenance depot is upgraded for use of the same by Concessionaire for maintenance and overhauling of rakes, the cost to be incurred for such upgradation should be borne by the concessionaire.





MoR informed that as per Concession agreement, the cost of development of maintenance depot shall be borne by the Concessionaire only.

10. JS/DoE asked whether Concessionaire will be required to lease trains from Indian Railways.

MoR informed that the concessionaire need not procure from Indian Railways and shall be free to procure trains from any source as far as it is meeting the Specifications and Standards for the trains as stipulated in the Concession Agreement.

11. PPPAC asked MoR about the timelines for invitation of RFP.

MoR informed that RFQs are under evaluation with the Tender Committee. MoR further stated that after appraisal by PPPAC, it would seek Cabinet' approval for the project and for giving land @ Re 1 to the private entity as this provision is in deviation with the extant policy of MoR. The RFP will be invited after obtaining cabinet approval.

M/O&BD-Railway Board informed that since the issue of land needs Cabinet's approval as the competent authority, it would be advisable to float the RFP only after Cabinet approval is obtained.

PPPAC advised MoR to explore the possibility of issuing RFP and submitting Cabinet Note in parallel. This would facilitate to issue the RfP and award the project within the timelines committed to the GoS and the Hon'ble Minister of Railways.

12. MoR informed that all other comments of PPPAC members - not discussed in the meeting – have been considered by MoR and addressed appropriately.

13. Representative(s) of DOLA submitted that they had no comments to offer.



14. The PPPAC granted Final Approval to the proposal subject to decisions and deliberations as above.

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



## Annexure

### List of Participants

S.No.	Name	Designation
1	Sh. Tarun Bajaj	Secretary (TA) - in Charge
2	Sh. P. S. Mishra	Member Operations & Business Development, Railway Board
3	Sh. Naresh Salcha	Member Finance, Railway Board
4	Sh. Madhukant Kady	Principal Executive Director/Coaching, Railway Board
5	Sh. Daljeet Puraskarla	IS/PTO, DEA
6	Sh. Rajeev Singh Yadav	IS/DnB
7	Sh. S K Kohn	Advisor/PPP, NIG A&P2
8	Sh. Appa Rao	ED/Transformation, Railway Board
9	Sh. A K Chandra	ED/Transformation, Mechanical, Railway Board
10	Sh. Amit Kumar Jain	OSD/Private Train Project Cell, Railway Board
11	Sh. Mukesh Kumar Gupta	Director (PTO), DEA
12	Sh. Arpit Anand Mishra	Asstt. Legal Advisor, Dept of Legal Affairs