

Sound Financial Management & Reliable Sources of Funding – Key Attributes for Timely Completion of Highway Projects

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Initially, not much private sector investment was forthcoming, but National Highways Authority of India (NHAI) addressed their concerns through the 'Model Concession Agreement (MCA)', which ensured that Concessionaire's investments would be secure and facilitated loans from financial institutions. There were also concerns about the growth of traffic over time, which directly impact the toll collection targets. To address this, NHAI came up with the annuity scheme, under which the private investor builds and maintains the road over a fixed period of time, the NHAI collects toll and pays the company an annual amount. Also, to make the Build-Operate-Transfer (BOT) projects attractive to private investors, the NHAI evolved a system under which it can give a grant up to 40% of the cost of a project under the system of Viability Gap Funding (VGF). A new Model Concession Agreement (MCA) for Highway Projects was put into practice from the year 2006. The new agreement includes Design, Build, Finance, Operate and Transport activities instead of Build, Operate and Transfer. Replacing 'transfer' by 'transport' is crucial as it implies that government, instead of owning the asset after the concession period, would continue to buy 'road services' from the Concessionaire.

The new MCA framework of 2006 addresses the issues, which are typically important for PPP projects, such as unbundling of risks & rewards, symmetry of obligations between the principal parties, equitable sharing of costs & obligations, and risk mitigation options under various scenarios including force majeure & termination, under transparent procedures. All the new NHAI projects, including the 6 laning of 6500 km highways at a cost of Rs 22,750 crore cleared by the PM's Committee on Infrastructure (Col) are being awarded as per the new MCA. The highlights of the New MCA are as under :

- Partial guarantee of traffic risk to the Concessionaire.
- Concessionaire's interest protected in competing roads.
- Performance standards of the highways clearly spelt out.
- Provision for change in scope, if any, required during construction and operation period included.
- Utilities to be relocated by the Concessionaire but it will be excused from failure in case of delay by owning agencies.
- Focus on road User's safety.
- Users fee charges, revision thereof and concession to local traffic clearly spelt out.
- NHAI has to provide land free from all encumbrances, NHAI to bear cost of all pre-construction activities.
- Risks are allocated to the party, which is best suited to handle it.
- Lowest subsidy/grant quoted by the bidders towards viability gap funding or earliest premium quoted by the bidder is the basis for award.

- Force Majeure conditions and relief to the party under such conditions clearly spelt out and strong dispute resolution mechanisms.

A survey covering 12 states and 3 central agencies covering 86 PPP projects awarded in 5 infrastructure sectors has revealed that highway sector evoked massive response in as many as 74% PPP projects when compared with other sectors as Urban Development (13%), Ports (9%), Airports (2%) and Railways (2%). Still the ambitious highway program under National Highway Development Program (NHDP) is lagging far behind the completion schedules. Certain modifications to Model Concession Agreement (MCA) suggested by BK Chaturvedi Committee (2009) for making PPP more attractive are given as under :

- Increase in equity grant (VGF) to 40% by merging equity and O&M grants.
- Project wise PQ in RFQ to be substituted with annual/periodic PQ.
- Threshold Technical Capability (TTC) of bidders to be reduced from twice the estimated project cost to estimated project cost i.e., brought down by 50%.
- Applicability of Conflict of interest at RFP stage instead of RFQ since applicants would be unaware of each other at RFQ stage. The identity of other bidders occurs only when the list of qualified/eligible applicants is put up for information only after RFQ stage.
- Relaxing the condition of forfeiture of entire Bid Security which is a significant amount between 1 to 2 % of Total Project Cost (TPC) to mere 5% of value of Bid Security due to non-responsiveness of tenderers.
- Extension of concession period of Concessionaire in proportion to cost to be incurred for capacity augmentation with an upper cap of 5 years instead of existing clause for termination in case of exceeding of designed traffic.

Still a lot needs to be done for making this gigantic NHDP a success story for carrying on the juggernaut of resurgent Indian economy to attain the great heights. This paper delves at length on the various issues pertaining to financing part of highway modernization programme with the sole objective of speeding up the ongoing NHDP @ 20 km/day as envisaged by Indian Minister of Road Transport & Highways.

Key words : Public Private Partnership (PPP), Model Concession Agreement (MCA), Build Operate Transfer (BOT).