

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

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No.11041/218/2007-Admn

17.01.2013
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POLICY MATTERS-TECHNICAL (122/2013)

(Decision taken in 131st Executive Committee Meeting)

Sub: Non availability of Forest Clearances/Wild Life Clearances for on going BOT(Toll) Projects affecting the issue of Completion Certificate/COD by NHA.

In certain BOT(Toll) projects, it is observed that a part of the project length, NHA is not able to hand over to the Concessionaire for want of Forest Clearance/Wild Life Clearance/Non availability of land due to 3D not being notified and the project completion is delayed. In this context Circular No.NHA/CMC/2010/Misc/13873 dated 07.09.2010 (copy enclosed) has already been issued for BOT (Annuity) projects. For BOT(Toll) projects in this situation, action can be taken under Clause 16.6 of the Concession Agreement by deleting the portion of the project length from the scope of the project. In this scenario NHA has to complete the portion subsequently when the clearance is obtained through an EPC Contract and it may not be convenient to toll the length subsequently. In consultation with NHB, the following alternative formulation had been agreed to, which can be adopted by NHA and the Concessionaire.

i) **Case-1: When the Affected Portion of the Project Highway is handed over to the Concessionaire before the Scheduled Date of Completion of the Project.**

The Concessionaire shall construct the affected project highway wherein the construction period of the same shall be evaluated in proportion to the construction schedule of the total project highway.

Extension of time shall be granted by the Authority for completing the construction of the affected project highway within the revised schedule without levying any penalty whatsoever.

The Concessionaire shall be entitled to escalation for that period of construction which goes beyond the scheduled date of completion of the project highway and up to the date of completion of the affected project highway, in case the extended construction period is more than 6 months w.e.f. the scheduled completion date of the project.

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(ii) **Case-2: In case the Affected Portion of the Project Highway is handed over after the Scheduled Completion Date.**

The Concessionaire shall complete the construction of the affected project highway wherein the construction period of the same shall be evaluated in proportion to the construction schedule of the total project highway plus a suitable period for mobilization to be mutually agreed between the two parties.

In addition, the Concessionaire shall be entitled to escalation effective from the scheduled completion date or provisional completion date whichever later till the completion of the affected project highway.

For the avoidance of doubt the following clarifications are made:-

(a) Escalation shall be calculated on the basis of the principle provided in the **Annexure**. The base date for calculation of escalation shall be the date of issue of Provisional Completion Certificate or scheduled date of completion of the project, whichever is later.

(b) Provisional Completion Certificate shall be issued by Independent Engineer/NHAI for the portion completed and the Concessionaire shall be permitted to do partial tolling on the completed portion. On completion of construction of the affected portion and acceptance of the same by the Independent Engineer as per the provisions of the Concession Agreement, the Concessionaire shall be entitled to toll the entire stretch of the project highway.

(c) If the revised completion schedule goes beyond six months of the scheduled completion date, escalation will be admissible. For instance, if the extension of time is for one year beyond the scheduled completion date, no escalation will be admissible for first six months and escalation shall be admissible for the balance six months. It is also clarified that if the concessionaire completes the work in 15 months time instead of the extended time of one year, escalation shall not be admissible for the first six months, escalation shall be given for the next six months and the rates frozen on completion of 12 months shall be payable for the balance 3 months.

In all cases value of the balance work and the period required for completion of the work shall be determined by the Independent Engineer.

(d) The Concessionaire shall continue the maintenance of the entire stretch including the portion for which clearance is awaited as per the Concession Agreement during the construction period. For the maintenance for the period beyond the schedule completion date, NHAI shall bear the routine maintenance cost on the basis of the estimate of IE or @ Rs 3.5 lakh per km per annum(2011-12 base year) for a four laned road and 60% of it for a two laned road escalated @ 5% per annum, whichever is lower. The payment will be made to the concessionaire only after the work has been completed and certified by the IE. NHAI on its discretion may also opt for routine maintenance through a third party. For major maintenance, if required, as per the schedule, the cost may be borne equally by NHAI and the Concessionaire. Independent Engineer shall determine the cost of such major maintenance.

(e) Payment of grant by NHAI shall be reduced proportionately on the basis of cost of work in the affected portion till the portion is handed over to the Concessionaire. No interest is payable by NHAI on the delayed grant. After handing over, the portion to the Concessionaire withheld grant shall be payable as per the provisions of the Concession Agreement. In case of premium payable by the Concessionaire, it shall be reduced proportionately as well on the basis of cost of work in the affected portion till the completion of construction of the affected length. On completion of the affected portion, the premium shall be payable as per the provision of the Concession Agreement. The cost of work in the affected portion is to be certified by the IE.

In order to give effect to the above provisions, a Supplementary Agreement shall be concluded with the Concessionaire. In the Supplementary Agreement, the Concessionaire shall provide an undertaking to forgo any claims on the Authority under Clause 16.6, 35.2, 35.3, 4.2, 10.3.4 or any other Clause of the Concession Agreement, for delay in handing over the affected stretch.

This issues with the approval of Executive Committee.

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24/01

(V.K.Sharma)

Chief General Manager (Coord./LA)

To,

All officers and employees of HQ/ZO/ROs/PIUs/CMUs/Site Offices

The Price shall be adjusted for increase or decrease in rates and price of labour, Cement, steel, plant, machinery and spares, bitumen, fuel and lubricants, and other material inputs in accordance with the principles, procedures and formulae specified below:

- (a) Price adjustment shall be applied on completion of the respective item of work.
- (b) Adjustment for each item of work shall be made separately.
- (c) The following expressions and meanings are assigned to the value of the work done:

RW= Value of work done for following items:-

- (i) Road works; and
- (ii) Other works

BR = Value of work done for the completion of Major Bridges and Structures.

- (d) Price Adjustment for changes in cost shall be paid in accordance with the following formulae:-

- (i)
$$VRW = 0.85RW \times [PL \times (LI - LO) / LO + PA \times (AI - AO) / AO + PF \times (FI - FO) / FO + PB \times (BI - BO) / BO + PM \times (MI - MO) / MO + PC \times (CI - CO) / CO + PS \times (SI - SO) / SO]$$
- (ii)
$$VBR = 0.85 BR \times [PL \times (LI - LO) / LO + PA \times (AI - AO) / AO + PF \times (FI - FO) / FO + PM \times (MI - MO) / MO + PC \times (CI - CO) / CO + PS \times (SI - SO) / SO]$$
- (iii)
$$CO / CO + PS \times (SI - SO) / SO]$$

Where

VRW = Increase or decrease in the cost of road works/ other works during the period under consideration due to changes in the rates for relevant components as stated in sub-paragraph (e)

VBR = Increase or decrease in the cost of Major Bridges and Structures during the period under consideration due to changes in the rates for relevant components as stated in sub-paragraph (e)

PB, PC, FI, PM and PS are the percentages of bitumen, cement, labour, other materials, and steel/components (including strands and cables) respectively for the relevant items as stated in sub-paragraph (e)

PA is the percentage of plant, machinery and spares component for the relevant item as stated in sub-paragraph (e).

PF is the percentage of fuel and Lubricants for the relevant items as stated in sub-paragraph (e).

AO = The wholesale price index as published by the Ministry of Commerce & Industry, Government of India (hereinafter called "WPI") for construction machinery for the month of the Base Date.

AI = The WPI for construction machinery for the month three months prior to the month to which the IPC relates.

BO = The official retail price of bitumen at the nearest refinery at {Panipat} on the base Date.

BI = The official retail price of bitumen at nearest refinery at {Panipat}, on the first day of the month three months prior to the month to which the IPC relates.

CO = The WPI for cement for the month of the Base Date.

CI = The WPI for cement for the month three months prior to the month to which the IPC relates.

FO = The official retail price of high speed diesel (HSD) oil at the existing consumer pumps of Indian Oil Corporation ("IOC") in the state of {Haryana} on the Base Date.

FI = The official retail price of HSD at the existing consumer pumps of IOC in the State of [Haryana] on the first day of the month three months prior to the month to which the IPC relates.

LO = The Consumer price index for industrial workers for the {circle**** in the State of Uttar Pradesh}, published by Labour Bureau, Ministry of Labour, Government of India, (hereinafter called "CPI") for the month of the Base Date.

LI = The CPI for the month three months prior to the month to which the IPC Relates.

MO = The WPI for all commodities for the month of the Base Date.

MI = The WPI for all commodities for the month three months prior to the month to which the IPC relates.

SO = The WPI for steel (rods) for the month of the Base Date.

SI = The WPI for steel (rods) for the month three months prior to the month to which the IPC relates.

(e) The following percentage shall govern the price adjustment of the Contract Price;

Component	Item				
	Road Works				
	Earthwork, Granular Work, and Other works	Bituminous work	Cement Concrete Pavement	Culverts, Minor bridges and other structures	Major Bridges and Structures
Labour (PL)	[20%]	[20%]	[20%]	[15%]	[15%]
Cement (PC)	[5%]	NIL	[20%]	[15%]	[15%]
Steel (PS)	Nil	Nil	Nil	[15%]	[20%]
Bitumen (PB)	Nil	[15%]	Nil	Nil	Nil
Fuel and Lubricants (PF)	[10%]	[10%]	[10%]	[10%]	[10%]
Other Materials (PM)	[50%]	[40%]	[35%]	[30%]	[25%]
Plant, Machinery and spares (PA)	[15%]	[15%]	[15%]	[15%]	[15%]
Total	100%	100%	100%	100%	100%



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(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India

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CIRCULAR

NHAI/CMC/2010/Misc./13873

7th September 2010

Sub: BOT Annuity Projects - Delays in fulfillment of NHAI's obligations under Concession Agreement

It is observed that during implementation of certain ongoing BOT (Annuity) projects, NHAI was unable to fulfill its obligation as per provision of the Concession agreement, such as handing over land, Environmental and Forest Clearance and Approval of GAD from Railway etc. In some cases, these obligations could not be met even up to the Schedule Project Completion Date.

2. In such cases the concessionaires, not being in default and not being able to achieve completion milestone due to NHAI's failure in meeting its commitment, press for issuance of "Completion Certificate" and consequential payment of annuity. The situation was presumably not envisaged at the time of project award.

3. The matter has been considered and it has been decided that for all annuity projects where NHAI is unable to fulfill its obligation as per provision of the Concession Agreement, the Technical Division shall in the first instance assess reasonable time frame for fulfillment of NHAI's obligations and further action taken as under:

3.1 In case it is assessed that NHAI shall not be in a position to fulfill its obligations in a reasonable time frame, the balance scope of the work may be deleted from the Scope of Project by a Negative Change of Scope. The "Completion Certificate" / "Provisional Certificate", as the case may be, may be issued subject to fulfillment of Concessionaires' Obligations as per Concession Agreement for the portion of the land already handed over in accordance with the Concession Agreement and payment of annuity dealt with accordingly. The financial implications of the resultant Negative Change of Scope shall be dealt with in accordance with provisions of the

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meeting*

Concession Agreement. In case the financial implication is either not covered in the Concession Agreement or more than the limit prescribed in the related agreement, a Supplementary Agreement shall have to be executed with the Concessionaire to cater for the entire implications.

3.2 In case it is assessed that NHAI shall be in a position to fulfill its Obligations in a reasonable time frame, Concessionaire shall agree to complete the balance work within a reasonable time assessed by Independent Engineer after meeting NHAI's Obligations. In such case a Supplementary Agreement may be entered into with the concessionaire which should have provision of, but not limited to the following:

- a) The concessionaire shall indemnify and absolve NHAI from all the damages, penalties, claims, costs, expenses, or losses or any adverse action or impact to NHAI by direct, indirect, consequential or any, due to delay in meeting his obligation (handing over the land or clearances as the case may be).
- b) NHAI will not exercise Negative Change of Scope to the Concessionaire and not withheld or reduce the Annuity Payment, as construed in the Concession Agreement, if it is otherwise admissible.
- c) The Concessionaire shall complete the balance work within a reasonable time as to be determined by the Independent Engineer depending upon the nature of the work, however, not exceeding 18 (eighteen) months in any case. Delay in completion of such work shall be dealt with as per provision of Concession Agreement.

This bears the approval of Chairman.


(P. K. Sharma)
General Manager (CMC)

Copy to:
All Members
All CGMs / GMs / DGMs & Managers
All ROs / PDs