



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. NHAI/CGM (CMC)/2015/1628

24.04.2015

To,

All CGMs/GMs, Technical Division,
NHAI - HQ.

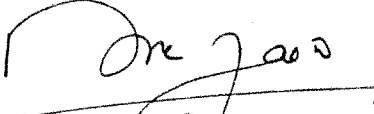
Sub: Issuance of Completion Certificate or Provisional Completion Certificate in respect of PPP Projects.

The issuance of Completion Certificate or Provisional Completion Certificate in respect of PPP Projects was deliberated by the Executive Committee in its 238th meeting held on 23.04.2015 and it was decided that henceforth the Completion Certificate/Provisional Certificate for PPP projects shall be issued by the IE without seeking prior clearance from NHAI or any other Authority as per the relevant provisions of the Concession Agreement.

2. It was also decided that the instructions may be issued by the concerned Technical Division to the IEs appointed for PPP projects under their jurisdiction as per the letter approved by the Competent Authority (copy enclosed). Accordingly, all Technical Divisions are requested to issue the enclosed letter to the IEs appointed for PPP projects under their jurisdiction.

3. This has the approval of Competent Authority.

Encl: As above.


(M/K Jain)
CGM (Tech) - CMC

Copy to:

1. PS to Chairman, NHAI.
2. PS to Member (PPP)
3. PS to Member (Fin/Admin)
4. PS to Member (Tech)
5. PS to CVO, NHAI
6. All ROs and PDs - For information and necessary action please.

To

M:

Sub.: Issuance of Completion Certificate or Provisional Completion Certificate in respect of PPP Projects.

Sir,

Issue of Completion Certificate or Provisional Completion Certificate (PCC) in respect of PPP projects has been one of the critical activities which needs to be accomplished cautiously as undue delay in issue of certificate results in loss of revenue to the Concessionaire (and also to the Government in case of revenue sharing/annuity projects) and issuing certificate in haste may cause inconvenience and safety hazards to the road users besides undue benefit to the Concessionaire. Article 14 of the MCA makes provisions for issue of Completion Certificate.

2. The Schedule-Q of Model Concession Agreement also defines the "Terms of Reference" for Independent Engineer which stipulates role and functions of the Independent Engineer (Para 3). One of functions of IE is to conduct Tests on completion of construction and issuing completion/provisional Completion Certificate. Further as per Para 5.13 of TOR of IE, the Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.

Further as per para 3.2 of ToR, the Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

3. As per standard RFP for IE issued by NHAI, the Independent Engineer shall appoint its authorized representative, who shall issue on behalf of the IE, the Provisional Completion Certificate and Completion Certificate along with the Team Leader and shall carry out any such task as may be decided by NHAI. The IE shall take prior approval of NHAI before issuing Provisional Completion Certificate and Completion Certificate.

4. Accordingly, as per the practice, the proposal for issue of certificate is prepared and recommended by the Independent Engineer (IE) and then by Regional Officer/Project Director and is processed in the Headquarters for issue of certificate by the IE. Recently concept of Inspection Committee has also been introduced which inspect the site after receipt of the proposal.

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5. The issue regarding authority to issue completion certificate in the Concession Agreement came for discussion in O.M.P. 531/2014 – Soma Isolux Kishangarh Beawar Tollway P. Ltd. V/s NHAI. The Hon'ble High Court expressed the following view:-

"The above clauses make it clear that Authority which has to issue PCC is the I.E. Clause does not require to I.E. to seek prior clearance from the NHAI or any other Authority for issuance of the PCC. If the I.E. is satisfied that the necessary pre-conditions have been satisfied then it should proceed to issue the PCC.

The two main factors that have to be ensured before the PCC is issued are 'safety; and 'reliability'. In other words, the I.E. will have to ensure that the highway in question is both safe and reliable for public use before it could grant the PCC for commencement of commercial operation. For this, it has to ensure that there is substantial compliance with the Schedule 'I' Tests."

6. The matter has been considered and it has been decided that the Independent Engineer will issue Completion Certificate or Provisional Completion Certificate as the case may be without seeking prior clearance from NHAI or any other Authority as per relevant provisions of Concession Agreement.
7. It has been observed that IEs are performing their role casually in these matters and the proposals which they submit are not complete and not in compliance to the provisions of the Concession Agreement. Sometime the items of work which are required to be completed for safe and reliable operation of the project highway are proposed to be included in the punch list. It has also been observed that due consideration to the quality of work is not given before recommending Provisional Completion Certificate. This is perhaps considering that ultimately NHAI will approve the proposal; the IE did not show seriousness in recommending the proposal for Completion Certificate.
8. Reference is invited to Clause 14.5 of the MCA which provides for withholding of Provisional Certificate if it is determined that the Project Highway or any part thereof does not conform to the provisions of the agreement and cannot be safely and reliably placed in commercial operation. The clause provides for action to be taken in such eventuality.
9. Henceforth, since the IE will be the Authority to issue of Provisional Completion Certificate, they should take the entire responsibility for compliance of the provisions of the Concession Agreement before issue of the Completion Certificate. It should be kept in mind that issue of Completion Certificate is linked with the start of tolling for the project. Untimely issue of the certificate without due regard to the 'safety' & 'reliability' aspects or in contravention of the Concession Agreement may invite complaints and public criticism. The IE has to therefore act strictly as per the Concession agreement keeping the overall public interest in view in a fair and impartial manner consistent with the highest standard of professional integrity. This responsibility has to be exercised by the IE Agency which has

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enter into contract with NHAI & IE agency shall be responsible for any lapses on the part of its officials including team leader. The IE agency should therefore duly audit the work of team leader and put in place a proper mechanism to ensure that the role of IE is performed in a professional manner.

10. A checklist based guidelines to be followed by IEs for issue of Completion Certificate or Professional Certificate are enclosed as Annex 1. The checklist is only indicative and does not alter or modify the role of IE as stipulated in the respective Concession Agreement. The responsibility for ensuring that provisions of the Concession Agreements are complied with shall squarely lie with the IE who should perform this duty in a fair manner, consistent with the highest standards of professional integrity.

Yours faithfully

(.....)

Encl: As above.

Annex - I

Checklist/Guidelines for Independent Engineer (IE) regarding Completion Certificate/Provisional Certificate for PPP Projects

While issuing Provisional Certificate or Completion Certificate for any PPP project, IE shall satisfy themselves that all provisions and conditions laid down in the related contract(s) and/or Concession Agreement with regard to issue of such Provisional Certificate or Completion Certificate have been complied with. Such satisfaction of IE, shall among various such performances required, also include the following:-

1. Project Highway has been constructed as specified in the Schedule-B and Schedule-C and in conformity with the Specifications and Standards set forth in Schedule-D of the Concession Agreement.
2. All Tests have been conducted in accordance with Schedule-I and have been witnessed by representative of the Authority (NHAI). The IE shall observe, monitor and review the results of the Tests to determine compliance of the Project Highway with Specifications and Standards. The IE shall ensure that the Tests are successful and the Project Highway can be safely and reliably placed in commercial operation.
3. IE shall ensure that the Concessionaire shall comply with the provisions of the Concession Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users.
4. Project Highway has been constructed in accordance with the Project Completion Schedule set forth in Schedule-G of the Concession Agreement. In the event of failure of the Concessionaire to achieve any Project Milestone, action as per relevant provision of the Concession Agreement may be completed or proposal may be referred for approval of Competent Authority with the recommendation of IE.
5. Approval of the Competent Authority for proposal/issue of Change of Scope (positive/negative), if any, has been obtained.
6. In case of the Provisional Certificate, list of outstanding items (Punch List) has been prepared and signed jointly by the Independent Engineer and the Concessionaire. The Punch List shall include only those items of work which are minor in nature and not affecting the safety and reliability of the Project Highway.
7. All lapses, defects or deficiencies observed by the Independent Engineer in the construction of the Project Highway are rectified and all NCRs issued are closed in accordance with the provision of the Concession Agreement.

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