

No. NH-NH-24028/14/2014-H(Vol-II) (134863)
Government of India
Ministry of Road Transport & Highways
(Highways Section)
Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated 05.08.2023

OFFICE MEMORANDUM

Subject: Minutes of the Meeting of the Inter-Ministerial Committee held on 19.07.2023 at 4:00PM to discuss the changes in model RFP and MCA of EPC, HAM and BOT (Toll) modes of contract

Minutes of the meeting of the Inter-Ministerial Committee held under the Chairmanship of Secretary (RT&H) on 19.07.2023 at 4:00PM to discuss the changes in model RFP and MCA of HAM and BOT (Toll) are forwarded herewith for information and necessary action.

Encl: As Above



(Sushant Sudan)

Deputy Secretary to the Government of India

Telephone No.23314316

To

1. Secretary, Department of Economic Affairs
(Kind attention: Shri Baldeo Purushartha, Joint Secretary)
2. Secretary, Department of Financial Services
(Kind attention: Shri Kartikeya Mishra, Director)
3. Secretary, Department of Legal Affairs
(Kind attention: Shri S.K. Singh, Assistant Legal Adviser)
4. CEO, NITI Aayog
(Kind attention: Shri C.P. S. Reddy, Adviser, NITI Aayog)

Copy, for taking immediate necessary action in accordance with the decisions of the IMC, to:

1. Shri K. Venkata Ramana, Member (PPP), NHAI
2. Shri NRVVMK Rajendra Kumar, Member (Finance), NHAI

Copy also to:

1. Sr. PPS to Secretary (RT&H)
2. Sr. PPS to AS (H)

RECORD OF DISCUSSION

Context	Meeting of Inter-Ministerial Committee to discuss changes in model RFP and MCA of EPC, HAM and BOT (Toll) modes of contract
Date & Time of Meeting	19 th July, 2023 at 4:00PM
Venue	Committee Room, 5 th Floor, Transport Bhawan, New Delhi
Chair	Shri Anurag Jain, Secretary, MoRTH

1. The list of the participants is at Annexure-1.
2. The meeting was convened to discuss proposed amendments to model contract documents of EPC, Ham and BOT (Toll).
3. Issues discussed in the IMC meeting and decision/action points emerged thereon are as under:
 - (i) **Agenda Item No. 1: NHAI Circular 11.39/2022 dated 17.06.2022 regarding addition of one more category, “For flexible pavement including structures”**

A presentation on the issue was made by Member (PPP), NHAI. The IMC was informed that in the decision taken in last IMC meeting held on 01.04.2022, changes were made in the RFP and MCA of HAM project to allow Lowest Quoted Bid Project Cost (BPC) as the basis for awarding HAM Project and O&M cost to be fixed as in EPC projects. The changes in Clause 23.7 of MCA of HAM project issued by MoRTH included following three categories:

- a) For flexible perpetual pavement including structures
- b) For rigid pavement with 10-year maintenance period including structures
- c) For stand-alone Bridges/Tunnel works

The proposal brought before the IMC now is to add the category of “flexible pavement including structures”, as the same is also being executed by NHAI along with “Flexible perpetual pavement including structures”.

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It was observed that NHAI had already carried out the necessary changes in their Circular dated 17.06.2022. IMC directed that such changes should ideally be brought before the IMC before they are implemented.

Proposal as per **Annexure-2** was discussed and agreed to by the IMC.

(ii) Agenda Item No. 2 - Regarding making provisions in Standard Agreement/RFPs for engagement of Graduates & Diploma holders in Engineering/Technology/General Stream as an Apprentice as a part of compliance of the Apprentices Act, 1961

A presentation on the issue was made by Member (PPP), NHAI. It was stated that Ministry of Skill Development and Entrepreneurship (MSDE) has been suggesting to engage Apprentices as per Apprentice Act, 1961 and Apprenticeship Rules, 1992. Apprenticeship Rules, 1992 provide that within a financial year, each establishment shall engage apprentices in a band of 2.5 percent to 10 percent of the total strength of the establishment including contractual staff. The proposal was to make changes in the standard documents of EPC, Ham and BOT (Toll) to include provisions of the Apprenticeship Rules, 1992.

The matter was discussed by the IMC and it was observed that the concessionaires/ contractors are anyway meant to be complying with all the relevant Acts and Regulations. It was therefore felt that it may not be necessary to specify the requirement of compliance of a particular Act in the model contract documents. It was decided not to go ahead with the proposed amendments.

(iii) Agenda Item No. 3 - Modification in Clause 16.2.2 of Model Concession Agreement for HAM projects to resolve issue of applicability of tender premium/discount in Change of Scope under HAM Projects

Member (PPP) presented the matter, highlighting that certain interpretation issues have been observed in respect of premium / discount mentioned in

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Clause 16.2.2 (b) of MCA. In order to bring clarity on premium/ discount, a concept of factor (ratio of Bid Project Cost assessed by the Authority / Estimated Project Cost estimated by the Authority) was proposed and discussed in the IMC meeting. It was deliberated by the IMC that a better formulation on premium/ discount could be achieved by simply mentioning the Bid Project Cost assessed by the Authority in the RFP. The premium/ discount would then be ratio of Bid Project Cost quoted by Concessionaire/ Bid Project Cost assessed by Authority.

Further, it was proposed in this agenda item that 'design charges shall be considered only for new works or items (i.e. the works or items not similar to the works or items in the original scope) @ 1% of cost of such new works or items'. It was observed in the IMC that the proposed provision may lead to interpretational issues and better formulation is to allow 1% of cost of COS and not to deduct 1% negative COS, if COS is on net-cost basis.

It was decided by the IMC that the proposal needs to be reformulated and can be brought again before the IMC, after carrying out stakeholder consultations.

(iv) Agenda Item No.4 - Suggestions for inclusions of provisions regarding accepting Insurance Surety Bonds and e-bank guarantee as "Bid Security and Performance Security" in standard documents of EPC, HAM, and BOT (Toll)

Department of Expenditure vide Office Memorandum No. F. 1/4/2022-PPD dated 05.08.2022 made amendments in the Rule 170(i) and Rule 171(i) of General Financial Rules (GFR), 2017 to include e-bank guarantee as a means to accept Bid Security and Performance Security. Further, Department of Expenditure had amended Rule 170 (i) and Rule 171 (i) of GFR, 2017 to accept provision of Insurance Surety Bond as a mean of 'Bid Security' and 'Performance Security' vide OM dated 02.02.2022. The latest Circular issued by Department of Expenditure, O.M No. F. 1/2/2023- PPD dated 03.04.2023, also provides for

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Insurance Surety Bonds and e-bank guarantee as possible means of furnishing Performance Security.

Necessary amendments were made in the standard documents of EPC, HAM and BoT (Toll) by MoRTH on 31.05.2023 with the approval of Hon'ble Minister (RT&H). The same was placed before the IMC and granted post-facto approval.

3. The meeting ended with thanks to the Chair.

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Annexure-1

List of Participants

1. Shri Anurag Jain, Secretary (RT&H) - in Chair
2. Shri Amit Kumar Ghosh, Additional Secretary, MoRTH
3. Shri K. Venkata Ramana, Member (PPP), NHAI
4. Shri NRVVMK Rajendra Kumar, Member (Finance), NHAI
5. Shri Baldeo Purusharth, Joint Secretary, D/o of Economic Affairs
6. Shri C.P. S. Reddy, Adviser, NITI Aayog
7. Shri Kartikeya Mishra, Director, D/o Financial Services
8. Shri Sushant Sudan, Deputy Secretary, MoRTH
9. Shri Pawan Kumar, CGM, NHAI
10. Shri Rajender Kumar, GM, NHAI
11. Shri S.K. Singh, Assistant Legal Adviser, D/o Legal Affairs
12. Ms. Nidhi Arora, Lawyer, NITI Aayog

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Annexure - 2

Changes in MCA of HAM Projects

Clause no.	Existing Provision	Proposed Provision
Model Concession Agreement Clause no. 23.7.1	<p>O&M Payments 23.7.1</p> <p>The Parties acknowledge and agree that all O&M Expenses shall be borne by the Concessionaire and in lieu thereof; For the performance of its Maintenance obligations, a lump sum financial support in the form of biannual payments shall be due and payable by the Authority:</p> <p>a. For flexible perpetual pavement including structures: no maintenance charges shall be paid for the first year; 0.40% of the Bid Project Cost each for the second, third and fourth year; 0.60% of the Bid Project Cost each for the subsequent years till laying of the renewal layer or end of concession period, whichever is earlier. The requirement for the renewal</p>	<p>O&M Payments 23.7.1</p> <p>The Parties acknowledge and agree that all O&M Expenses shall be borne by the Concessionaire and in lieu thereof; For the performance of its Maintenance obligations, a lump sum financial support in the form of biannual payments shall be due and payable by the Authority:</p> <p>a. For flexible pavement including structures: no maintenance charges shall be paid for the first year; 0.40% of the Bid Project Cost each for the subsequent years till laying. of the renewal layer or end of concession period, whichever is earlier. The requirement for the renewal layer shall be worked out based on the survey and investigation of the existing pavement and the cost of such renewal works shall be made separately to the</p>

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	<p>layer shall be worked out based on the survey and investigation of the existing pavement and the cost of such renewal works shall be made separately to the Concessionaire @ 2.4% of Bid Project Cost. After laying of the renewal layer, the Concessionaire shall be paid @ 0.40% of the original Bid Project Cost each for the next four years and @ 0.60% of the original Bid Project Cost each till laying of the second renewal layer or end of concession period, whichever is earlier. After laying of the renewal layer, the Concessionaire shall be paid @ 0.40% of the original Bid Project Cost each for the remaining years till the end of concession period.</p> <p>b. For rigid pavement with 10 year maintenance period including structures: no maintenance charges shall be paid for the first year; 0.20% of the cost Bid Project Cost each for the second, third & fourth year, 0.40% of the Bid Project</p>	<p>Concessionaire @ 2.4% of Bid Project Cost. After laying of the renewal layer, the Concessionaire shall be paid @ 0.40% of the original Bid Project Cost each for the next four years and @ 0.80% of the original Bid Project Cost each till laying of the second renewal layer or end of concession period, whichever is earlier. After laying of the renewal layer, the Concessionaire shall be paid @ 0.40% of the original Bid Project Cost each for the remaining years till the end of concession period. For the avoidance of doubt, it is clarified that if there is any requirement of renewal layer during the initial 5 years & during the 5 years after laying of first renewal layer, then the cost of such renewal layer and any requirement of structural layer during the concession period shall be borne solely by concessionaire.</p> <p>b. For flexible pavement including structures: no maintenance charges shall be paid for the first year; 0.40% of the Bid Project Cost each for the second, third and fourth year; 0.60% of the Bid Project Cost each for the subsequent years till laying of the renewal layer or end of concession</p>
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	<p>Cost each for fifth, sixth, seventh & eighth year, 0.60% of the Bid Project Cost each till the end of concession period.</p> <p>c. For stand-alone Bridge/Tunnel works: the concessionaire shall be paid no maintenance charges shall be paid for the first year; 0.20% of the Bid Project Cost each for the next five years, 0.40% of the Bid Project Cost each for the remaining years till the end of concession period.</p> <p>The Parties further acknowledge and agree that any O&M Expenses in excess of the O&M Payments shall be borne solely by the Concessionaire, save and</p> <p>Except as expressly provided in this Agreement. For avoidance of doubt it is clarified that the O&M Payments will be subject to any Change in Scope of the Project of the Concessionaire under</p>	<p>period, whichever is earlier. The requirement for the renewal layer shall be worked out based on the survey and investigation of the existing pavement and the cost of such renewal works shall be made separately to the Concessionaire @ 2.4% of Bid Project Cost. After laying of the renewal layer, the Concessionaire shall be paid @ 0.40% of the original Bid Project Cost each for the next four years and @ 0.60% of the original Bid Project Cost each till laying of the second renewal layer or end of concession period, whichever is earlier. After laying of the renewal layer, the Concessionaire shall be paid @ 0.40% of the original Bid Project Cost each for the remaining years till the end of concession period. For the avoidance of doubt, it is clarified that if there is any requirement of renewal layer during the initial 5 years & during the 5 years after laying of first renewal layer, then the cost of such renewal layer and any requirement of structural layer during the concession period shall be borne solely by concessionaire.</p> <p>c. For rigid pavement including structures: no maintenance charges shall be paid for the first year; 0.20% of the Bid Project Cost each for the second, third &</p>
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	Article 16 of this Agreement.	<p>fourth year, 0.40% of the Bid Project Cost Project Cost each for fifth, sixth, seventh & eighth year, 0.60% of the Bid Project Cost each till the end of concession period.</p> <p>d. For stand-alone Bridge/ Tunnel works: the concessionaire shall be paid no maintenance charges shall be paid for the first year; 0.20% of the Bid Project Cost each for the next five years, 0.40% of the Bid Project Cost each for the remaining years till the end of concession period.</p> <p>The Parties further acknowledge and agree that any O&M Expenses in excess of the O&M Payments shall be borne solely by the Concessionaire, save and except as expressly provided in this Agreement. For avoidance of doubt it is clarified that the O&M Payments will be subject to any Change in Scope of the Project of the Concessionaire under Article 16 of this Agreement.</p>
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