

Government of India
Ministry of Road Transport & Highways
Project Zone-IV

Transport Bhawan, 1, Parliament Street, New Delhi -110001.

Dated: 9th Nov, 2019

To,

1. The Chief Secretaries of all the State Governments/ UTs.
2. The Chairman, National Highways Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110 075.
3. The Managing Director, NHIDCL, PTI Building, New Delhi-110001.
4. The Principal Secretaries/ Secretaries of all States/ UTs Public Works Department/ Road Construction Department/ Highways Department (dealing with National Highways and other centrally sponsored schemes).
5. All Engineers-in-Chief and Chief Engineers of Public Works Department of States/ UTs/ Road Construction Department/ Highways Departments (dealing with National Highways and other centrally sponsored schemes).
6. The Director General (Border Roads), Seema Sadak Bhawan, Ring Road, New Delhi-110 010.
7. All CE-ROs, ROs and ELOs of the Ministry.

Subject: Interest Bearing Working Capital Advance against unbilled executed work to mitigate the cash flow problems of HAM Concessionaire & EPC contractors and modification in Schedule – H of the EPC Contract.

1. Interest Bearing Working Capital Advance for HAM projects: -

Ministry of Road Transport & Highways/ NHAI/ NHIDCL has awarded many projects on Hybrid Annuity Mode (HAM) in which the payments for the works carried out by the Concessionaire are made as per provisions of Article-23 (Payment of Bid project cost) of the Concession Agreement. The Payment of bid project cost is payable in two parts (i) [40% (forty per cent) of the Bid Project Cost, adjusted for the Price Index Multiple, shall be due and payable to the Concessionaire in 5 (five) equal installments of [8% (eight per cent)] each during the Construction period in accordance with the provisions of Clause 23.4 and (ii) The remaining Bid Project Cost, adjusted for the Price Index Multiple, shall be due and payable in [30 (thirty)] biannual installments commencing from the 180th (one hundred and eightieth) day of COD in accordance with the provision of Clause 23.6.

1.1 It has been observed that despite clear provisions on the obligations of the parties and all favorable conditions to execute the works, there are instances where the Concessionaire could not demonstrate the progress of work due to reasons of poor planning, lack of resources, poor mobilization, financial problems of the Concessionaire Company, lack of external financial support, etc. Also, knowing fully well the payment conditions,

the Concessionaire quote the cash flow problem due to executed works not qualifying for payment under achieved milestone based payment conditions stipulated in Concession Agreement. Such projects, stalled/ delayed due to cash flow problem during construction stage are posing threat to road users from road safety point of view also.

1.2 In order to revive the projects facing such cash flow problem and to complete the projects early, it has been decided to extend the facility of Interest-Bearing Working Capital Advance against unbilled executed work, not qualifying for payment under milestone achievement-based payment conditions under HAM. The interest bearing working capital advance @4% grant may be released at completion of every 10% of physical progress before achieving the subsequent milestone in following manner: -

- (i) The revival of the project is possible by extending this facility.
- (ii) Such Working Capital shall be available during the construction period against the work done, which could not be billed and is not qualifying for payment under milestone achievement-based payment conditions. On receipt of request from HAM Concessionaire for Working Capital Advance, Independent Engineer (IE) shall determine the physical progress based on value of work of acceptable quality and specification done, which could not be billed.
- (iii) If such unbilled amount is 10% or more of bid project cost, then a grant @4% of bid project cost adjusted for price index multiple shall be released by Regional Officer of MoRTH (RO) as Interest Bearing Working Capital Advance against work done by the Concessionaire on recommendation of implementing agency. The amounts so released shall be chargeable with interest @ (Bank Rate+ 3% per annum to be compounded annually) on reducing balance basis. It shall be adjusted in subsequent milestone based release of payment. The interest shall be chargeable from the date of release of advance payment till the date of achievement of subsequent milestone. While releasing such amounts, Bank Guarantee or any other security shall not be sought, as the advance is against work already done.
- (iv) RO, MoRTH is delegated with power to sanction such advance. However, in case of the project, where Cure Period Notice has been issued, a decision on sanctioning of Interest-Bearing Working Capital Advance shall be taken by concerned ADG/ Chief Engineer (Project zone), HQ, MoRTH, Member NHAI/ director NHIDCL considering the chances of revival of the project on payment of such advance.
- (v) The Working Capital Advance shall be released to an escrow account. Implementing agency shall ensure that the advance is utilized strictly for completion of the project.



(vi) The above modifications shall be incorporated in the subsequent amendment of the above document.

2. Interest Bearing Working Capital Advance for EPC projects: -

Ministry of Road Transport & Highways/ NHAI/ NHIDCL has awarded many projects on Engineering, Procurement and Construction (EPC) Mode in which the payments for the works carried out by the Contractors are made as per provisions of Article-19 (Payments) of the Contract Agreement. The Stage/ Interim Payments as per Article-19 are governed by the provisions in Schedule-H of the Contract Agreement.

2.1 The cash flow issue had been earlier identified by the MoRTH/ NHAI/NHIDCL and requisite modifications had already been made in Schedule-H. However, it has been observed that despite clear provisions on the obligations of the parties and all favorable conditions to execute the works, there are instances where the Contractors could not demonstrate the progress of work due to reasons of poor planning, lack of resources, poor mobilization, financial problems of the Contractor's Company, lack of external financial support etc. Also, knowing fully well the payment conditions, the Contractors quote the cashflow problem due to executed works not qualifying for payment under stage payment conditions stipulated in Schedule-H.

2.2 In order to revive the projects facing such cash flow problem and to complete the projects early, it has decided to extend the facility of Interest Bearing Working Capital Advance against unbilled executed work, not qualifying for payment under stage payment conditions, in the following manner:

- (i) The revival of the project is possible by extending this facility.
- (ii) Such Working Capital Advance shall be eligible for release at one intermediate stage during the construction period against the work done, which could not be billed and not qualify for payment under various stage of payment as per Schedule – H subject to the condition that the cumulative value of such works exceeds 5% of contract value.
- (iii) On receipt of request from EPC Contractor for Working Capital Advance, Authority's Engineer (AE) shall determine the value of work done, which could not be billed and is not qualifying for payment under stage payment conditions *but qualifying the requisite quality standards & specifications as per contract agreement.*
- (iv) The amounts so determined by AE shall be verified by Executive Engineer/ Project Director of executing agency and restricted to 90% of the amount assessed by AE, which shall not in any case exceed 10% of the Contract Price.



(v) 90% of the amount assessed by AE and verified & restricted to 10% of Contract Price by EE/PD as per Para-3(iv) above shall be released by regional officer, MoRT&H/competent DDO as Interest Bearing Working Capital Advance against work done by the Contractor. While releasing such amounts, Bank Guarantee or any other security shall not be sought, as the advance is against work already done.

(vi) Concerned RO is delegated with power to sanction such advance. However, in case of the project, where Cure Period Notice has been issued, a decision on sanctioning of Interest-Bearing Working Capital Advance shall be taken by ADG/CE HQ MoRTH/ Member NHAI/ Director NHIDCL, considering the chances of revival of the project on payment of such advance.

(vii) The amounts so released as per Para-3(iv) above along with interest @ Bank Rate+ 3% per annum to be compounded annually on reducing balance basis shall be recovered by executing agency in 2 equal installments from subsequent consecutive 2 eligible invoices becoming due & payable immediately after release of such advance.

3. Modification of schedule H of EPC Contracts:

Payment in EPC Contract is regulated as per the provisions of the Schedule H. As per the provision of Schedule – H, the payment becomes eligible only on completion of a stage stated in certain percent/ length of project highway. In 4/6 laning projects, however, the actual construction practice/ sequencing being followed in field/ site differ either due to traffic flow or other site constraint requirements. In case of 4/6 laning projects, the contractor usually constructs new carriageway for significant length, diverts the traffic to this new carriageway and then develops the existing carriageway. This leads to substantial time lag between completion of one carriageway and the full completion of 4/6 lane. Because of mismatch between the actual construction sequencing followed at site and the Schedule – H provisions, even if, the contractor completes, the work in one carriageway of 2/3 lane for entire length, will not be entitled for any payment because the work in adjoining carriageway is not yet completed. This adversely affects the cash flow of the contractor with debilitating effect on the project. Ministry received feedback from contractors/ AE's, regarding problems of cash flow due to non-completion of stage despite investing sufficient fund as stipulated in the Schedule H. This has been examined and decided to allow modification in the Schedule H of the already executed running contracts, with regard to payment for pavement and culverts by allowing payment on construction of one side carriageway of 2/3 lanes instead of completion of 4/6 laning. However, to avoid any unintended benefit to the Contractor, the payment stage would be doubled in terms of Percentage/ length/ number for 4 laning project converted to 2-laning equivalent. A sample modified Schedule is annexed below for example. It shall be subject to following conditions:



(a) Payment procedure of other works including Major Bridges, Minor Bridges, VUP, PUP, ROB etc. shall remain unchanged.

(b) The sum of payment to be computed in respect of all the items of work for the project shall not exceed the contract price.

3.1 Such modification in the Schedule H shall be approved at the level of Concerned Regional Officers of MoRTH/ NHAI/ NHIDCL.

4. The above modifications shall be incorporated in the subsequent amendment of the above documents.

5. This issues as per IFD concurrence Note No #80 dated 08.11.2019 and with the approval of Competent Authority.

Yours faithfully,



(Pankaj Kumar Mourya)

Superintending Engineer – Zone (IV)-II

For Director General (Road Development) & SS

Copy to:

1. All CEs in the Ministry of Road Transport & Highways
2. The Secretary General, Indian Roads Congress
3. NIC-for uploading on Ministry's website under "What's new"

Copy for kind information to:

1. Sr. PPS to Secretary (RT&H)
2. PPS to DG (RD) & SS
3. PPS to SS
4. PPS to SS&FA
5. PS to ADG-I
6. PS to JS (T)/ JS (H)/ JS (LA&C)/ JS (EIC)

ANNEXURE

Modification in Schedule – H of EPC Contracts of 4-Laning road projects in NHAI as under:

State of Payment	Payment procedure	Modification payment procedure
a. Widening and strengthening	Unit of measurement is linear length. Payment of each stage shall be made on prorata basis on completion of a stage in a length of not less than 10 (ten) percent of the total length.	Unit of measurement is linear length. Payment of each stage shall be made on pro-rata basis on completion of a stage in a length for equivalent 2-laning of not less than 20 (twenty) percent for equivalent 2-laning length.
b. New 4-lane realignment, bypass	Unit of measurement is linear length. Payment of each stage shall be made on pro rata basis on completion of a stage in full length or 5 (five) km length	Unit of measurement is linear length. Payment of each stage shall be made on pro rata basis on completion of a stage in full length or 10 (ten) km length for equivalent 2-laning.
c. Culverts	Cost of each culverts shall be determined on pro rata basis with respect to the total number of culverts. Payment shall be made on the completion of five culverts.	Cost of each culvert shall be determined on pro rata basis with respect to the total number of culverts. Payment shall be made on completion of ten nos. Culverts corresponding to equivalent Two laning.

