

INFRASTRUCTURE CONSULTANTS ASSOCIATION OF INDIA



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Date: 02/10/2021

Ref. No. ICAI/NORTH/Hon'ble Shri Nitin Gadkari ji/2021-22/815

To,

Hon'ble Shri Nitin Gadkari ji,

Ministry of Road Transport & Highways,

Transport Bhawan, 1 Sansad Marg,

New Delhi - 110001

Email: nitin.gadkari@nic.in

Sub: Various Problems of DPR/AE/IE Consultants.

Ref: 1. NHAI/ Policy Guidelines/Consultancy/2020 No. 10.2.23 dated 20th July, 2020
2. NHAI/Policy Guidelines/Miscellaneous Guidelines/2021 Policy Circular No. 18.63/2021 dated 08th January, 2021

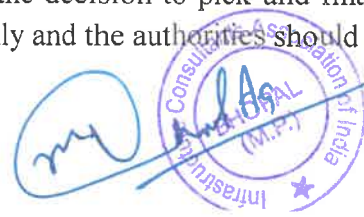
Hon'ble Sir,

We thank you Sir for organizing an interactive event on 31.08.2021 with Independent Engineers, Authority's Engineers and DPR Consultants to understand the various problems faced by them. Dr. L.N. Malviya, Chairman, Infrastructure Consultants Association of India has also attended the event and apprised with the various problems of Independent Engineers, Authority's Engineers & DPR Consultants. Your Hon'ble Sir has patiently listened to various problems and asked Dr. Malviya to furnish all the details through letters for proper redressal of the problems.

Accordingly the Association wish to raise the following important issues before the Hon'ble Minister for appropriate redressal:

1. Fixing Responsibility in Case of Accidents/Failure of Structures at Site:-

The Association has received numerous representation regarding fixing of responsibility in case of happening of accidents/ failure of structures at sites. As a general practice adopted by NHAI/other clients the onus are transferred to Key Personnel and the consultants as well if any accidents/ failure of structures are reported. Fixing the responsibility to the consultants are unreasonable when the CVs are evaluated and approved by the clients at their sole discretion and the consultants have no say in the finalization and approval process of CVs except pick and submit the desired CVs as per the requirement of Key Personnel given in the RFP Documents. Moreover the responsibilities of actual supervision of works at sites lie solely on the Key Personnel present during the execution of work at sites. The Association is of the view that if the responsibility of consultants are to be fixed, the decision to pick and finalize the candidature of Key Personnel should be given to the consultants only and the authorities should have no role in the selection and finalization of Key Personnel.



2. To Extinguish the Limit of Replacement of Key Personnel from the Contracts:-

The maximum limit of replacement of Key Personnel prescribed in the contract documents should be scrapped. The Association feels that the maximum limit of replacement casts a slur on the working of consultants because the consultants have no authority to replace any Key Personnel beyond a certain limit given in the contract documents irrespective of the performance of the Key Personnel. Many a times the wrong Key Personnel with poor attitude/inadequate knowledge or having any other bad personal traits could not be removed by the consultants only because the consultants will be debarred if the limit of replacements cease. Hence the Association will persistently work for removal of limit given in the contract documents for ensuring quality output of services.

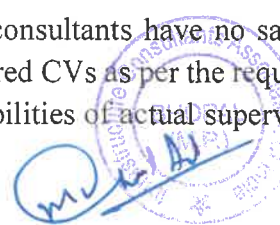
3. Formulation of Policy Guidelines to Deal with the Activities of Delinquent / Careless / Non-Performer Key Personnel/Sub-Professional.

It is submitted for the information of Hon'ble Sir that NHAI has implemented two separate Policy Guidelines dated 20.07.2020 and 08.01.2021 for deciding deterrent/penal action in the following circumstances:

1. Uniform Policy to decide the deterrent action against the consulting firms/ key personnel for Proven Misrepresentation of Facts and Fraudulent practices.
2. Standard Operating Procedure to decide panel action in case of failure of Structures/Highways.

It has been felt in various deliberation between consultants that a Uniform Policy is also needed to deal with delinquent/careless/non performer Key Personnel who during the execution do not perform their duties according to the provisions of Terms of Reference given in RFP documents. Their dereliction towards duty lead to many incidents of major as well as minor. Sometimes they do not follow frequency of testing schedules prescribed in the specifications/codes. All these actions of delinquent/careless/non performer Key Personnel/Sub-Professional adversely affect the Quality and Workmanship of the projects. There is no regulatory provision either in the RFP Documents or any Policy Guidelines to check the activities of such careless/negligent Key Personnel/Sub-Professional by the consultants. There should be some Policy Guidelines to regulate the activities of such type of Key Personnel/Sub-Professional. The consulting firms should have some form of mechanism in their hands through which they can highlight the activities of such non performing Key Personnel/Sub-Professional to the authorities and may seek replacements without reduction in remuneration in case the concerned Key Personnel/ Sub-Professional do not improve their performance after affording reasonable opportunities. In the absence of such regulations the delinquent Key Personnel/Sub-Professional tend to discharge their duties on their whims and fancies and often leave the job at the crucial juncture of the project for their personnel benefits. Under such circumstances their wrong doings in the projects never exposed unless some major incidents happened and then all the blames of Sub-standard/Poor quality works shifted on the shoulder of the consultants. There should be some form of regulations which can held such Key Personnel responsible for their acts of omissions and commissions in the previous projects also.

Further, the Association has received numerous representation regarding fixing of responsibility in case of happening of accidents/ failure of structures at sites. As a general practice adopted by NHAI/other clients the onus are transferred to Key Personnel and the consultants as well if any accidents/ failure of structures are reported. Fixing the responsibility to the consultants are unreasonable when the CVs are evaluated and approved by the clients at their sole discretion and the consultants have no say in the finalization and approval process of CVs except pick and submit the desired CVs as per the requirement of Key Personnel given in the RFP Documents. Moreover the responsibilities of actual supervision of



works at sites lie solely on the Key Personnel present during the execution of work at sites. The Association is of the view that if the responsibility of consultants are to be fixed, the decision to pick and finalize the candidature of Key Personnel should be given to the consultants only and the authorities should have no role in the selection and finalization of Key Personnel.

The Association therefore seeks your kind interference to evolve suitable solutions for the problems stated in the aforesaid para. It is further submitted that solutions of the above problems will not only benefit the consultants/consulting firms but will also advantageous to the departments.

PRAYER

We therefore pray to Hon'ble Sir to kindly take up the matter stated from Para 1 to Para 3 above with NHAI Authorities for proper redressal of grievances of consultants for simplification of existing complex rules thereby saving the consultants from unnecessary hardships. We also pray to Hon'ble Sir to kindly take up the matter for formulation of a Policy Guidelines with the Chairman NHAI as submitted below:

1. The Consultants should be given powers to replace non-performing Key Personnel/Sub-Professional with due consultation with NHAI Authorities without counting the replacements in the limits of replacements given in Clause 4.5 of GCC in the RFP.
2. There should be some regulations to punish the guilty Key Personnel/ Sub Professional even if they have left the job prematurely before completion.
3. In case the powers of replacing Delinquent, Careless or Non-Performer Key Personnel/ Sub Professional are not delegated to Consultants and if incidents/accidents take place at Project sites, the guilty Key Personnel/ Sub Professional should be debarred for a period to be decided by NHAI Authority and the firms employing such Key Personnel/Sub Professional should be levied financial penalty only.

Thanking You

Yours sincerely,
For Infrastructure Consultants Association of India

(M.L. Gupta)
Secretary





भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

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G-5 & 6, Sector-10, Dwarka, New Delhi-110075

दूरभाष / Phone : 91-11-25074100/25074200

NHAI/ Policy Guidelines/Consultancy/ 2020
No. 10.2.23 dated 20th July, 2020
[As per approval given by Chairman on
File No. NHAI/11013/AE&IE/RFPDocu./2017-Part(1)]

Sub.: Uniform policy to decide the deterrent action against the consulting firms/ key personnel - Reg.

NHAI has issued guidelines on "Deterrent penalty action against defaulting consultants" vide Policy Matter: Technical (97/2012) dated 17.04.2012 for a uniform approach, while dealing with matters related to Errors, Omissions & Commissions or Misconduct of Consultants. Further, vide NHAI policy guidelines no. 10.2.18/2019 dated 11.06.2019, it was decided to dispense with the committee of 3 CGMs & the respective CGM was to deal with such cases.

2. It has come to the notice that the different technical divisions are adopting different policies while deciding upon the extent of deterrent action against the consulting firms for proven misrepresentation of facts and fraudulent practices by the consulting firm/ key personnel. In order to have uniformity within the organization, following approach shall be adopted.

S. No	Type of Default	Action to be taken
1.	Consulting Firm's experience/ document is found to be false at any stage i.e., from bidding to completion of the project.	Debarment of the firm for a period of 2 years.
2.	At any stage, if the CV of key personnel is found to be inflated/ false & the experience is claimed with a firm other than the bidder.	<p>(i) For all stages of DPR Consultancy Contracts / Before Commencement of AE & IE Contracts:</p> <p>CV of key personnel to be rejected and individual to be blacklisted for a period of 3 years. The CV shall be assigned zero marks, but evaluation of the proposal shall continue.</p> <p>In case of 1st instance, the bidding firm to be warned and a penalty of Rs. 2.0 Lakh to be levied.</p> <p>In case of 2nd instance, the bidding firm to be warned again and a penalty of Rs. 5.0 Lakh to be levied.</p> <p>For repeated cases, an incremental penalty of Rs. 5.0 Lakh to be added from 3rd instance onward on the consulting firm.</p> <p>(i) After Commencement of AE & IE Contracts:</p> <p>Key personnel to be blacklisted for a period of 3 years.</p> <p>Monetary penalty to be imposed as per clause 9 of the GCC on Fake CVs.</p>

[Handwritten signature]

3.	At any stage, if the CV of key personnel is found to be inflated/ false & the experience is claimed with the bidding consulting firm itself.	CV of key personnel to be rejected and individual to be blacklisted for a period of 3 years. Debarment of the bidding consulting firm for a period of 2 years. The proposal (RFP) of the bidder shall be cancelled.
4.	If a key personnel is already engaged in other ongoing works on NHA/ MoRTH/ NHIDCL & applies for a new assignment/ consulting firm.	If it is established that the individual has given consent for the new assignment prior to 3 months before the completion of original or extended tenure of assignment in hand, the individual to be blacklisted for a period of 3 years. In such case, no action will be taken against the firm. The CV shall be assigned zero marks, but evaluation of the proposal shall continue. If it is established that the individual has not given consent for the new assignment, the consulting firm be debarred for a period of 2 years. The proposal (RFP) of the bidder shall be cancelled. In such case, no action will be taken against the individual.
5.	If the academic credentials of any candidate is found false/ fake at any point of time.	CV of each candidate will be rejected and individual to be blacklisted for 3 years. Information will be sent to INFRACON portal. No action should be taken against the bidding firm.
6.	Ownership of equipment in case of Associate partner is found to be false.	The consulting firm to be warned and a penalty of Rs. 2.0 Lakh in case of 1 st instance and debarment of the associate for one year. The consulting firm to be warned again and a penalty of Rs.5.0 Lakh in case of 2 nd instance and debarment of the associate for one year. For repeated cases (more than 2 instances), bidding firm's debarment for a period of 2 year may be considered and debarment of the associate for 3 years.

Note: Due process of issuing notice, examining the reply, giving personal hearing, if sought, etc shall be followed before levy of penalty/ debarment, as given above.

4. In this regard, it is also clarified that the above methodology shall be applied for future cases only. In other words, it shall not be applicable to past/old cases where certain decision were already taken and communicated to all concerned.

5. Further, the deterrent actions taken against the consulting firms in the past on account of above specified defaults shall be considered in future cases to decide upon the applicability of second/ repeated instances.

6. The actions to be taken for various other defaults not listed above will be in accordance with the provisions of respective RFP/ contract documents.


(Amarendra Kumar)
CGM (Coord)

All Officers of HQ/RO/PIU/CMU

Copy to:

All Members/CVO

PS to Chairman



भारतीय राश्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

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NHAI/Policy Guidelines/Miscellaneous Guidelines/2021

Policy Circular No.18.63/2021 dated 08th January, 2021

(Decision taken on e-file Comp. No.-52082)

दूरभाष / Phone: 91-11-25074100/25074200

Sub: Standard Operating Procedure to decide penal action in case of failure of structures/ highway in NHAI projects.

Number of instances have been noticed where bridges/ structures/ approaches to structures, etc. have failed pre-maturely on account of serious lapses/omissions on the part of Concessionaires/ Contractors/ Consultants. Therefore, following Standard Operating procedure is hereby issued to decide upon the extent of penalty against such companies/ firms and key personnel of the firms.

1.1 Constitution of Expert Committee and compliance of post-accident mechanism as spelt out in NHAI's Policy Guidelines no. 18.51 dated 28.08.2020 and no. 18.54 dated 29.09.2020 without any delay.

1.2 During the currency of investigation, the concerned key personnel of the Contractor/ Concessionaire (eg, Project Manager, Bridge Engineer, etc.) and Consultancy Firm (eg, Team Leader, Resident Engineer, Bridge Engineer, Material Engineer etc.) may be kept under suspension from working on the project/ any other project of NHAI so as to ensure that the investigation is not influenced. Further, if the suspended personnel are found not guilty after conclusion of the investigation, they shall be treated as on duty during the period of suspension and the salary of key personnel of consultancy firms will be paid as per the consultancy agreement.

1.3 The following penal actions shall be taken in case of any reports on failure of structures/ poor quality of services after ensuring proper investigation.

Sr. No.	Type of Failure	Action to be taken against the concerned based on investigation			
		Contractor/ Concessionaire		Consultant	
		Firm	Key Personnel	Firm	Key Personnel
i)	Minor failure of structures/ highway due to design/ construction/ maintenance defect wherein no casualties are reported.	Rectification by contractor/ concessionaire on own cost + penalty of Rs. 30 lakh and written warning.	The key personnel may be kept on watch list for any future recurrence besides issuing written warning.	Token penalty of Rs. 5 lakhs on consultancy firm engaged during construction/ maintenance besides issuing written warning.	The key personnel may be kept on watch list for any future recurrence besides issuing written warning.
ii)	Major failure of structures/ highway due to design/ construction/ maintenance defect wherein no casualties are reported.	Rectification by contractor/ concessionaire on own cost and/or Debarment upto 1 year + Financial Penalty of Rs. 50 lakh to Rs. 5 Cr. depending upon the severity of failure/ neglect.	Debarment of concerned key personnel upto 2 years in NHAI works.	Monetary penalty of Rs. 20 lakhs on consultancy firm engaged during construction/ maintenance and/or Debarment upto 1 year	Debarment of concerned key personnel upto 2 years in NHAI works.
iii)	Major failure of structures/ highway due to construction/ maintenance defect leading to loss of human lives besides loss of reputation etc.	Rectification by contractor/ concessionaire on own cost and/or Debarment upto 2 years + Financial Penalty of Rs. 1 Cr. to Rs. 10 Cr. depending upon the severity of failure/ neglect.	Debarment upto 3 years	Monetary penalty of Rs. 40 lakhs on consultancy firm engaged during construction/ maintenance and/or Debarment up to 2 years	Debarment upto 3 years

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Note:

- i. The term Concessionaire implies all promoters of the SPV of the PPP project having 26% or more stake, whereas the term Contractor implies all Joint Venture Partners (jointly & severally responsible) in case of a EPC contract or the approved EPC Contractor working under SPV of a Concession.
- ii. The term Consultant refers to Authority Engineer, Independent Engineer, DPR/ Design Consultant, Proof Consultant & Safety Consultant.
- iii. In case of delayed failure i.e., failure due to construction but reported during maintenance period after the defaulting Contractor/Concessionaire has been demobilised, action shall be taken against the concerned Contractor/Concessionaire/Consultant only.
- iv. In case of lack of clarity in cost of structure the latest normative cost norms issued by MoRTH shall be adopted.

1.4 For each repeated lapse by the firm, the penalty for the subsequent offence shall be enhanced by an additional 50% as compared to penalty imposed in the previous instance applicable against the category of penalty under consideration.

1.5 In case the outcome of investigation is unclear or on the basis of conjectures, no action on debarment shall be taken and only suitable monetary penalty shall be imposed on all contracting/consulting firms engaged in construction/maintenance.

2. The firms/ individuals on which penal/ deterrent action was taken may represent to the "Reviewing Authority" in NHAI against the action/ penalty imposed.
3. The Competent Authority for approval of penal action against the Concessionaire /Contractors / Consultants will be the Chairman, NHAI and the Reviewing Authority will be the Executive Committee.
4. Suitable action on NHAI officials will be taken depending on the extent of dereliction of duties by the concerned officials keeping in view the Conduct Rules.
5. This SOP is applicable prospectively. However, in cases where decisions were taken, the agency/ individual may represent to the "Review Committee".


(Sheo Shankar Jha)
CGM (Coord.)

To

All officers of NHAI HQ/ROs/PIUs/CMUs/Site Offices

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11. PS to Chairman
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