



October - December 2023

This JSA Highways & Logistics Newsletter focuses on key developments undertaken in the Indian roadways and logistics sector between October - December 2023.

NHAI to undertake safety audit of all under construction tunnels

Following the collapse of the Silkariya tunnel in Uttarkashi, the National Highways Authority of India (“NHAI”) on November 22, 2023, announced that it will be conducting an audit on all 29 (twenty nine) under construction tunnels across India. Under this process, NHAI officials will collaborate with teams from the Delhi Metro Railways Corporation (DMRC) as well as other tunnel experts.

The inspection and audit will be conducted in a time bound manner, with the team submitting a report to NHAI within 7 (seven) days of completion of the inspection. NHAI has stated that the 29 (twenty nine) under-construction tunnels are located across the country with 12 (twelve) tunnels in Himachal Pradesh, 6 (six) in Jammu and Kashmir, 2 (two) each in Maharashtra, Odisha, Rajasthan and 1 (one) each in Madhya Pradesh, Karnataka, Chhattisgarh, Uttarakhand and Delhi respectively.

Source: [PIB](#)

NHAI awards TOT Projects under bundles 11, 12, 13 and 14

On October 28, 2023, NHAI awarded 2 (two) Toll, Operate and Transfer (“TOT”) bundles 11 and 12 for INR 6,584,00,00,000 (Indian Rupees six thousand five hundred and eighty four crore) in the states of Uttar Pradesh and Madhya Pradesh. The TOT projects will cover a combined length of 400 kms (four thousand kilometers). Subsequently, on November 15, 2023, NHAI awarded TOT bundles 13 and 14 of a combined length of 273 kms. (two hundred and seventy three kilometers) for INR 9,384,00,00,000 (Indian Rupees nine thousand three hundred and eighty four crore) to further boost the TOT model of monetization of national highways.

The awardees/concessionaires of the TOT projects are as follows:

1. Cube Highways and Infrastructure Ltd has been awarded bundle 11 comprising of 84 kms (eighty four kilometers) long Allahabad Bypass on NH19 in Uttar Pradesh for INR 2,156,00,00,000 (Indian Rupees two thousand one hundred and fifty six crore);
2. IRB infrastructure Trust has been awarded (a) bundle 12 comprising of 316 kms (three hundred and sixteen) long Lalitpur - Sagar -Lakhnadon section that passes through the states of Uttar Pradesh and Madhya Pradesh for INR 4,428,00,00,000 (Indian Rupees four thousand four hundred and twenty eight crore); and (b) bundle 13 comprising Kota Bypass and Stay Bridge on NH-76 in Rajasthan, as well as the Gwalior-Jhansi section of NH-75 in

the states of Madhya Pradesh and Uttar Pradesh for INR 1,683,00,00,000 (Indian Rupees one thousand six hundred and eighty three crore);

3. Cube Highways and Infrastructure Pte Ltd has been awarded Delhi-Meerut Expressway including the Delhi-Hapur section of NH-9 in the states of Delhi and Uttar Pradesh, as well as Binjabahal to Teliebani section of NH-6 in the state of Odisha under bundle 14 for INR 7,701,00,00,000 (Indian Rupees seven thousand seven hundred and one crore).

These projects have been awarded for a contract period of 20 (twenty) years. In the TOT model, the concessionaires are required to operate and maintain the highways through collection of user fee for these highways in accordance with prescribed fee rates under National Highway Fee (Determination of Rates and Collection) Rules, 2008, as amended from time to time.

Source: *TOT Bundle 11 and 12-* [PIB](#)

Source: *TOT Bundle 13 and 14-* [PIB](#)

NHAI allows submission of Insurance Surety Bond as bid security

The Ministry of Road Transport and Highways (“**MoRTH**”) *vide* circular dated May 31, 2023, had approved changes to the standard bidding documents for engineering, procurement and construction (“**EPC**”), hybrid annuity model (“**HAM**”) and build operate transfer (“**BOT**”) (Toll) projects, including e-bank guarantee and surety bonds as forms of performance security, following changes made to the General Financial Rules, 2017 allowing for submission of performance security in the form of insurance surety bonds.

Following these changes, for the first time, on November 10, 2023, NHAI accepted submission of insurance surety bond as performance security under the TOT bid for monetization of assets under bundle 14. This insurance surety bond has been issued @ 0.25% by the insurer without any margin money.

This initiative of accepting insurance surety bonds as opposed to bank guarantees will lead to concessionaires having liquidity and availability of financial resources for other projects.

Source: [PIB](#)

NHAI signs concession for development of Multi Modal Logistics Park at Nagpur

In December 2023, the government has entered into an agreement with the SPV incorporated by the name of DC Multi Modal Park (Nagpur) Limited (which is the SPV of DeltaBulk Shipping India Private Limited), for the development of Multi Modal Logistics Park (“**MMLP**”) in Nagpur over a land admeasuring 150 (one hundred and fifty) acres. From the side of the government, an SPV, Nagpur MMLP Pvt. Ltd. has been formed between National Highways Logistics Management Limited (“**NHLML**”), a 100% owned company of NHAI and Jawaharlal Nehru Port Authority (“**JNPA**”). JNPA has provided land for development of the MMLP and NHLML is providing the external rail, road connectivity as well as water and power supply

The project has been launched under the PM Gati Shakti National Master Plan and will be undertaken under the Public Private Partnership (PPP) mode at an estimated cost of INR 673,00,00,000 (Indian Rupees six hundred and seventy three crore).

The MMLP will provide facilities such as warehouses, cold storages, intermodal transfers, handling facilities for container terminals, bulk/break-bulk cargo terminals along with value added services such as sorting/ grading and aggregation/ desegregation areas, bonded warehouse and customs facilities as well as support logistics facilities such as offices for freight forwarders and transporters and truck terminals.

The MMLP will be developed in 3 (three) phases with Phase I creating about 9.47 MMT nine point four seven million metric tonnes) cargo handling facilities in an estimated period of 45 (forty five) years. The fall out of the development of the MMLP will be that regions such as Nagpur, Wardha, Chandrapur and Gondiya will also be boosted.

Source: [PIB](#)

NHAI amends the Policy Guidelines for determination of cost of Change of Scope (COS)/Reduction in Scope (RIS) in relation to EPC Projects

On June 10, 2020, the NHAI had issued Policy Guidelines for Determination of cost of Change of Scope (“COS”)/Reduction in Scope (“RIS”) due to Withdrawal of works/ alteration in works in EPC projects (“COS Guidelines”) in order to provide further clarification on the applicable schedules of rates, design charges and maintenance charges in relation to the unapproved COS/RIS. NHAI on November 10, 2023, has further amended these COS Guidelines, which are as follows:

1. Para 6 of the original draft of the COS Guidelines allowed the escalation in cost only when the completion period for the construction works is more than 18 (eighteen) months. Further, it was clarified that the concessionaire is not expected to take up any additional work under the COS provisions of the concession agreement which will require more than 18 (eighteen) months to complete. However, this provision has now been amended to state that the price adjustments on account of COS will be dealt in accordance with Clause 19.10 of the concession agreement for EPC projects read with Clause 13.2 (iii) for projects signed on the basis of model concession agreement for EPC projects (issued by MoRTH) on November 20, 2018 or later and in case of concession agreements signed on the basis of model concession agreement issued prior to November 20, 2018, Clause 19.10 is to be read in conjunction with Clause 13.2.2 of the relevant concession agreement.

As per Clause 19.10 of the concession agreement for EPC, a formula has been provided for determining the adjustment of contract price on account of increase or decrease in rates and price of labour, cement, steel, Plant, machinery and spares, bitumen, fuel and lubricants, and other material inputs. Clause 13.2 (iii) sets out the procedure to be followed by the concessionaire in case it receives a change of scope notice from NHAI or the project authority.

2. Under Para 9 of the original draft of the COS Guidelines it was provided that the value of the works that have been withdrawn, i.e. in case of reduction in scope due to withdrawal of work on the project would be determined as per the terms of Schedule-H of the concession agreement, and in case it was not possible to determine the value from Schedule-H, then reference would be made to Clause 13.2 of the concession agreement for EPC. This provision has been amended to also introduce and clarify that only wholesome withdrawal of works due to non-availability of right of way under Clause 8.3 of the concession agreement for EPC projects will be treated as RIS.

Source: [Amendment to the COS Guidelines issued by NHAI on November 10, 2023](#)

NHAI issues policy circular outlining the personnel to be deployed by EPC contractors

The NHAI *vide* its policy circular dated November 10, 2023, has provided further clarity in terms of interpretation of Clause 4.4 of the model concession agreement for EPC projects initiated by NHAI. As per Clause 4.4, the EPC contractor has to ensure that the contractor shall ensure that the personnel engaged by it or by the are at all times appropriately and adequately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.

NHAI has now spelt out the qualifications which the said personnel of the EPC contractor or the contractor’s subcontractor would need to possess. As per the policy circular, the EPC contractor would have to ensure that there has to be a deployment of 2 (two) project managers, a pavement engineer, quality manager, a bridge engineer, a design

director and a safety manager. The qualifications for each of the above personnel have also been set out in the policy circular.

Source: [NHAI Policy Circular dated November 10, 2023](#)

NHAI revises delegation of power for approval of change of scope, pre-construction cost and revised project capital cost

On November 3, 2023, the NHAI issued a policy circular stating that as per the decision taken by its board in a meeting held on October 18, 2023, it has been decided to revise and clarify the delegation of powers for approval of change of scope, revision of pre-construction cost and revision of project (capital) cost.

In relation to BOT (Toll), EPC projects under Bharatmala scheme, the matrix of delegation of powers for change of scope and revision of project cost will be as follows:

| Description | Level of Delegation |
|--|---------------------|
| Up to 10% of the awarded cost | Chairman, NHAI |
| >10% but up to 15% of the awarded cost | Executive Committee |
| >15% of the awarded cost | NHAI board |

In relation to TOT/InvIT related projects, the matrix of delegation of powers for change of scope and revision of project cost will be as follows:

| Description | Level of Delegation |
|--|---------------------|
| Up to 10% of the Concession Fee | Chairman, NHAI |
| >10% but up to 15% of the Concession Fee | Executive Committee |
| >15% of the Concession Fee | NHAI board |

Finally in relation to BOT (Toll)(involving viability gap funding), annuity/ HAM projects, the matrix of delegation of powers for change of scope and revision of project cost will be as follows:

| Description | Level of Delegation |
|---|---------------------|
| Up to 10% of the awarded cost of the project | Chairman, NHAI |
| Up to 15% of the awarded cost of the project | Executive Committee |
| >15% but up to 20% of the awarded cost of the project | NHAI board |
| >20% of the awarded cost of the project | MoRTH |

When it comes to revision of pre-construction costs, the circular clarifies that the delegation of powers notified in a previous circular dated November 18, 2019 will continue and the same will be as follows:

| Description | Level of Delegation |
|---|-----------------------|
| Variation of costs within the sanctioned estimates and contingencies put together | Regional office, NHAI |

| | |
|--|------------------|
| Variation within 10% of the project cost | Concerned Member |
| Variation within range of 10-25% of the project cost | Chairman, NHAI |
| Variation above 25% of the project cost | NHAI board |

In relation to the above, the circular dated November 3, 2023 also clarifies that an increase in capital cost of the project beyond 20% of the sanctioned capital cost on account of time overrun, change of scope, under estimation, etc. (excluding increase in costs due to statutory levies, exchange rate variation and price escalation during the approve project time cycle) will only be considered and approved by the authority which accorded approval to the project in the first place.

Source: [NHAI Policy Circular dated November 3, 2023](#)

NHAI revises the interest rate applicable for HAM Projects

The NHAI, on October 10, 2023 announced the 1 (one) year marginal cost of the fund-based lending rate (“MCLR”) interest rates for the top 5 (five) scheduled commercial banks as on October 10, 2023 which is payable by NHAI to the concessionaire in terms of Clause 23.6.4 of the concession agreement related to HAM projects.

Article 23 of the aforementioned concession agreement deals with payment of Bid Project Cost to the Concessionaire and in terms of Clause 23.6, the NHAI is required to pay the remaining completion cost during the operation period in accordance with the milestones stipulated therein.

As per Clause 23.6.4 of the concession agreement, an interest amount is due and payable on the reducing balance of completion cost at an interest rate equal to the average of 1 (one) year MCLR of top 5 (five) scheduled commercial banks in India plus 1.25%. In this regard, the NHAI declares the list of top 5 scheduled commercial banks every calendar year based on the balance sheet size as declared in the banks’ annual reports. The 1 (one) year MCLR of the top 5 (five) scheduled commercial banks is taken at the start of every quarter.

Accordingly, the rates of the top 5 (five) banks were provided, as follows:

| S. No. | Bank's name | One Year MCLR in % (as on October 1, 2023) | Average Rate Applicable for the period October 1, 2023 to December 31, 2023 |
|--------|----------------------|---|--|
| 1 | State Bank of India | 8.55 | 8.80% p.a. plus 1.25% |
| 2 | HDFC Bank | 9.15 | |
| 3 | ICICI Bank | 8.95 | |
| 4 | Bank of Baroda | 8.70 | |
| 5 | Punjab National Bank | 8.65 | |

Source: [NHAI Policy Circular dated October 10, 2023](#)

NHAI introduces policy for implementation of ATMS on National Highways and Expressways

With the focus on digital enforcement of traffic rules and to ensure comprehensive approach towards road safety and accident response, the NHAI vide its policy circular dated October 10, 2023, has implemented updated functional and technical specifications for advanced traffic management system (“ATMS”) to be used for national highways and

expressways through “**Updated ATMS Document**”. Prior to this, the ATMS standards and specifications were issued on September 15, 2016. The NHAI examined the relevance of the erstwhile standards and has now implemented the Updated ATMS Document in supersession of the earlier standards. The Updated ATMS Document provides for benchmark requirements and improvements to be made so as to cater to the latest technologies in the field of Intelligent Transport System and harness latest advancement of the artificial intelligence (AI) technology.

Some of the key features of the Updated ATMS Document are as follows:

1. Dedicated workstations in the command and control centre for traffic police representatives will be provided to strengthen collaboration with local traffic agencies. Further, there are provisions made that will enable sharing camera feeds over the network to enhance real-time coordination and response.
2. The new specifications have introduced the video incident detection and enforcement System (“**VIDES**”) replacing the earlier cameras. The new system will be able to identify 14 (fourteen) distinct incidents including triple riding, helmet and seatbelt violations, wrong lane or direction driving, presence of animals on the highway, and pedestrian crossings. Depending on the detected incident, VIDES will alert route patrol vehicles or ambulances, generate e-challans, relay alerts to nearby Variable Messaging Boards, or send notifications through ‘Rajmarg yatra’ mobile app to nearby travellers.
3. VIDES has also been integrated with the vehicle with speed detection system (VSDS) which will enhance the use of automatic number plate recognition (ANPR) cameras.
4. The new specifications also provide for online sharing of highway status and other important information and inputs that will help both the enforcement agencies and the highway users in planning for disaster management effectively.
5. Upgraded traffic monitoring camera system (TMCS) will be installed at every 1 km (one kilometer) on the national highways, that will enable automated detection of accidents and stalled vehicles.
6. The standards will also enable implementation of integrated utility corridors along the national highways to develop optic fibre cables (“**OFC**”) infrastructure. While the ATMS equipment will use OFC to communicate with Command-and-Control Centre, 5G based communication will also be utilised in the future as the coverage increases.

Source: [PIB](#)

MoRTH approves schemes under Central Road and Infrastructure Fund for regions in Himachal Pradesh

With a view to improve and strengthen infrastructure in the state of Himachal Pradesh, under the direction of the MoRTH, Shri Nitin Gadkari has approved schemes amounting to INR 154,25,00,000 (Indian Rupees one hundred and fifty four crore and twenty five lakh) for development of road infrastructure in Una and Kangra regions. The funds will be allocated from the Central Road and Infrastructure Fund (CRIF) and the approval for the same has already been received by MoRTH.

This initiative will also support the natural disasters that affected Himachal Pradesh in the recent past and will cater to the smooth transportation needs of the state.

Source: [PIB](#)

NHAI issues standard operating procedures for preventing altercation at toll plazas

The NHAI has on October 9, 2023 issued standard operating procedures (“**SOPs**”) in order to prevent altercations at toll plazas.

As per the SOP, field offices of NHAI monitor the performance of the toll collecting agency and the toll collecting agency will ensure that staff wear the prescribed NHAI uniform with a name badge.

In case of any anticipated violence the same will only be handled by toll plaza Manager/ lane supervisors, who will wear body cameras to record instances of violence at the toll plazas. In case of unruly behavior by a road user, the lane supervisor shall intervene and try to resolve the issue peacefully and the toll plaza staff shall not use provocative language or resort to violence.

Toll plaza officials have been empowered to take help from local police and lodge a FIR in case the issue persists or escalates and videography by the staff has been permitted to submit proof of the incident to the police.

NHAI field offices have been directed to ensure that toll collecting agency possesses police verification of each and every staff deployed at the toll plaza.

The toll collection agencies have also been obligated to give monthly statement of incidents/ FIRs to the concerned NHAI Project Implementation Unit (PIU), so that in case of inaction by the authorities, NHAI field officials can report the same to the District Collector and request action.

In addition to all of the above, a special drive named "*Toll par Calm*" has been initiated by NHAI at plazas. Under this drive, NHAI will collaborate with professional psychologists to provide for anger management and customer delight training to toll plaza staff.

Source: [PIB](#)

MoRTH issues draft policy guidelines on usage of inert material for national highway construction

MoRTH through its office memorandum dated December 27, 2023, issued draft policy guidelines regarding the mandatory usage of urban solid waste for construction of embankments on highways and other roads in the country and has invited comments and feedback on the draft policy.

The policy has been introduced by MoRTH to plan alternative use of generated solid waste in highway road projects in light of the Solid Waste Management Rules and relevant order/guidelines/rules/amendments by the courts, National Green Tribunal, Ministry of Environment, Forest and Climate Change or other concerned departments.

With the use of inert materials, MoRTH aims to resolve the issue of disposal of urban solid waste and move towards more sustainable construction of highways which have minimum impact on the environment.

Source: [Office Memorandum dated December 27, 2023](#)

Highways & Logistics Practice

In the highways sector, JSA provides end to end assistance to its clients in all aspects of development and operations including but not limited to setting up of green field projects and documentation in respect thereof such as joint venture agreements, shareholders agreements, foreign direct investment approvals, project financing, EPC contracts, O&M contracts, vetting of tender documents including review of concession agreements and regulatory issues including competition, licensing and tariff matters before various regulatory fora.

JSA advises clients on across the spectrum of contractual, commercial, policy, regulatory and legal issues at all stages of the value chain in the logistics sector – infrastructure such as roads, railways, inland waterways, aviation, ports, and logistics parks, as well as services such as transportation, cold chain facilities, and warehousing. JSA has been regularly engaged in advising project developers, investors, suppliers and contractors on commercial/ transactional issues, advising financial institutions and borrowers in relation to financing transactions and dispute resolution (including arbitration, litigation and representation before various judicial fora).

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