

No. NH-35014/02/2014-H
Government of India
Ministry of Road Transport & Highways
(Highways Section)

1, Sansad Marg, Parivahan Bhavan,
New Delhi, dated the 1st December, 2014

To,

The Chairman
National Highways Authority of India,
G-5 & 6, Sector - 10,
Dwarka, New Delhi - 110075

Subject: Maintenance of road during development period and construction period -reg.

Sir,

I am directed to refer to the subject mentioned above and to say that it has generally been observed that in BOT projects, after award of the work and till the signing of Agreement, the condition of the road continues to deteriorate. As stipulated in clause 6.2 of the MCA, the period from signing of Agreement till the Appointed date is termed as the Development Period. The responsibility of the maintenance of the road during the Development Period lies with the Authority. However, on several counts, the Authority faces challenges in maintaining the road during the Development Period.

2. To overcome this, it has been decided that, henceforth, the maintenance during Development Period shall be the responsibility of the Concessionaire and they shall make necessary provisions for this at the bid stage itself. Subsequent to signing of the Agreement, the Concessionaire shall maintain the road in the pothole free condition; and shall ensure that a minimum speed of at least 40 kmph (for passenger cars) is maintained on the road

3. In case the Appointed Date is not achieved and the Project is terminated prior to achievement of the appointed date, the Concessionaire shall be paid the cost of such maintenance by the Authority. For this purpose, a lump sum per kilometer rate of maintenance for a period of one year shall be specified upfront in the DCA. The maintenance of the road shall be covered by the Concessionaire for a period of one year from signing of the Agreement or till achievement of the Appointed Date, whichever is earlier. In case, there is further delay (more than one year) in achieving the Appointed Date, and the Concessionaire is asked to maintain the road, this shall be paid by the Authority on a pro-rata basis for the period concerned.

Issued
31/12/14


4. The maintenance obligation during the construction period lies with the Concessionaire. Clause 12.2 of the MCA provides that "During construction period, the Concessionaire shall maintain the existing lanes of the project Highway so that they are at no time materially inferior as compared to their condition 7 days prior to this Agreement". Feedback from Project Authorities has revealed that this provision is vague and difficult to enforce. In this regard, it has been decided that maintenance obligation of the Concessionaire during the construction period shall be to maintain the road in pothole free condition such that a speed of at least 40 kmph (for passenger cars) maintained in all sections of the road. For 6-laning projects, the maintenance obligation during construction should conform to Annexure-II of schedule-K.

5. In order to give effect to the suggestion at Para 3 above, Project Authority shall sign a supplementary agreement for maintenance of the highway with the concessionaire for those projects where appointed dates are yet to be achieved. In cases, where the project Authority estimates that the said project may take 6 months or more (beyond one year) to achieve appointed date, supplementary agreements shall contain the requisite clause to pay maintenance cost on a pro-rata basis upfront to the concessionaire.

5. I am further directed to advise that NHAI may formulate the necessary Amendments in all the corresponding clause(s) of the MCA to give effect to the above decision, get it vetted legally and send it to Ministry at the earliest.

6. This issues with the approval of the Competent Authority.

Yours faithfully,


(Debjani Chakrabarti)
Deputy Secretary (Highways)
Telephone No. 23718575