

Press Release

NITI Aayog, New Delhi
September 05, 2016

NITI Aayog had moved a proposal containing various measures to address the issues facing the construction sector and its problems for consideration of Cabinet Committee on Economic Affairs (CCEA), which was considered by the CCEA in its meeting held on 31st August, 2016.

NITI has followed up the decisions of the CCEA with the issue of instructions on the subject vide two office memoranda here today. While one of these is titled 'Measures to revive the Construction Sector', the other contains the initiatives which are meant to be expeditiously examined and considered by all the concerned Government Departments/ Ministries and PSUs. The instructions cover the following measures:

“The construction sector has been facing a number of problems, mainly arising from the liquidity constraints caused on account of their payments not being released by the Government Departments/ Public Sector Undertakings (PSUs) pursuant to the arbitral awards. To discuss the problems of the construction sector, detailed deliberations/ consultations were held with the representatives of the construction industry, banks, major government PSUs and concerned Ministries/ Departments. Based on the above deliberations/ consultations, the NITI Aayog placed a proposal before the Cabinet Committee on Economic Affairs (CCEA) for its consideration suggesting various short- term and long-term measures required for addressing the issues ailing the construction sector. The CCEA, chaired by the Hon'ble Prime Minister, has considered the proposals of NITI Aayog in its meeting held on 31st August 2016 and approved the same for the revival of construction sector.

2. Accordingly, following instructions are hereby issued for compliance and necessary action by all concerned i.e. the Government Departments/ Ministries/ Public Sector Undertakings awarding the public contracts/ implementing various projects involving construction activities:

- 2.1 In case of contracts/ concessions where the process of arbitration was initiated under the pre-amended Arbitration Act, the PSUs/ Departments may seek the consent of the contractors/ concessionaires to transfer the pending cases under the amended Arbitration Act, wherever possible. The shift to amended Arbitration Act is expected to make the arbitration process more cost effective and help in settlement of the disputes in a timely manner;
- 2.2 In case of claims where the PSU/ Department has challenged the Arbitral Award already announced, 75% of the award may be paid by the PSU/ Department to the contractor/ concessionaire against Bank Guarantee without prejudice to the final order of the Court in the matter under challenge. The payment may be made into a designated Escrow Account with the stipulation that the amount so released will be

used, first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same PSU/ Department, as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the PSU/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Department/PSU.

- 2.3 In case the subsequent court order requires refund of the money paid by a PSU/ Department against a Bank Guarantee, the amount shall be refunded by the contractor/ concessionaire along with appropriate interest. The rate of interest on such refund amount may be decided by the PSU/ Department keeping in view the cost of capital to the PSU/ Department or the rate of interest provided for in the Contract Agreement or the rate of interest awarded under the Arbitral Award under challenge.

Notes:

- (i) For Departments, cost of capital shall be taken as Weighted Average Coupon rate of outstanding stock of Central Government securities for the period ending in the preceding quarter, or Weighted Average Coupon rate of Central Government securities issued during the preceding quarter (whichever is higher);
 - (ii) PSUs shall either calculate their own cost of capital or take State Bank of India's One Year Marginal Cost of fund-based Lending Rate plus 2%;
 - (iii) The appropriate interest rate on such refund shall be decided at the time of releasing funds to the Escrow Account;
 - (iv) If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against bank guarantee as per the laid down criteria.
3. All the concerned Ministries/ Departments shall also issue instructions to their respective PSUs for taking necessary action accordingly."

The Office Memorandum dealing with the initiatives on the measures for revival of the Construction Sector include the following:

"2. The NITI Aayog has separately issued instructions on the subject with regard to the immediate measures to be taken by all concerned. In addition to the said instructions, the CCEA has also directed that the following measures may be expeditiously examined by all the concerned Departments/ Ministries /PSUs:

- 2.1 Item-rate contracts, may be substituted by EPC (turnkey) contracts, wherever appropriate. Such contracts have been in vogue for over two decades in the developed world and Fédération Internationale Des Ingénieurs-Conseils (FIDIC – an International Federation of Consulting Engineers, known by its French acronym) has also published such contractual frameworks;

- 2.2 Model bidding documents and Model EPC contracts, suitably revisited or modified wherever required to suit the requirements of particular sectors, may be adopted by PSUs/ Government Departments for construction works;
 - 2.3 Ministry of Finance has issued model bidding documents for RFQ, RFP etc. which may be adopted (with appropriate changes wherever required) in all sectors. Model EPC contracts have been developed for Highways and Railways and published by the erstwhile Planning Commission also. NHAI has already adopted this document and all construction contracts are currently being structured on this model. NITI Aayog shall assist the concerned departments, wherever required, in this regard.
 - 2.4 The method of conciliation has proved more effective in settling disputes as per experience of some of the PSUs. All PSUs/ Departments issuing public contracts may consider setting up Conciliation Committees/ Councils comprising of independent subject experts in order to ensure speedy disposal of pending or new cases. Recourse to such conciliation may be open before, during or after the Arbitration proceedings. A provision to this effect would also need to be made in the Contract Agreements in future as a mechanism for resolution of disputes.
3. All the concerned Ministries/ Departments shall also communicate the above to their respective PSUs for taking necessary action on the aforesaid measures.”