

C.P.U.No. 918

27

TWENTY SEVENTH REPORT
COMMITTEE ON PUBLIC UNDERTAKINGS
(2007-2008)

(FOURTEENTH LOK SABHA)

**National Highways Authority of India –
National Highways Development Project (NHDP), Phase-I**

MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS

(Action taken by the Government on the recommendations contained in the Fourteenth Report (Fourteenth Lok Sabha) of the Committee on Public Undertakings (2006-2007) on National Highways Authority of India – National Highways Development Project (NHDP), Phase-I.)



Presented to Lok Sabha on 25.04.2008
Laid in Rajya Sabha on 25.04.2008

LOK SABHA SECRETARIAT
NEW DELHI

April 2008 / Vaishaka 1930 (S)

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**COMPOSITION OF THE COMMITTEE ON PUBLIC UNDERTAKINGS
(2007-2008)**

Chairman
Shri Rupchand Pal

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2. Shri Ramdas Bandu Athawale
3. Shri Ramesh Bais
4. Shri Gurudas Dasgupta
5. Smt. Sangeeta Kumari Singh Deo
6. Shri Francis K. George
7. Dr. Vallabhbai Kathiria
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Secretariat

1. Shri S.K. Sharma Additional Secretary
2. Shri J.P. Sharma Joint Secretary
3. Smt. Anita Jain Director
4. Shri Ajay Kumar Deputy Secretary-II
5. Ms.Malvika Sharma Senior Executive Assistant

* Elected w.e.f. 17.5.2004 Dr. Rameshwar Oraon and Kunwar Jitin Prasad ceased to be Members of the Committee consequent on their appointment as Ministers of States w.e.f. 6.04.2008.

** ceased to be Members of the Committee consequent on their retirement from Rajya Sabha w.e.f. 02.04.2008 and 09.04.2008.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorized by the Committee to submit the Report on their behalf, present this Twenty Sixth Report on Action Taken by Government on the recommendations contained in the Fourteenth Report (Fourteenth Lok Sabha) of the Committee on Public Undertakings (2006-2007) on National Highways Authority of India – National Highways Development Project (NHDP), Phase-I.

2. The Fourteenth Report of the Committee on Public Undertakings (2006-2007) was presented to Lok Sabha on 8th December 2006. Action Taken Replies of the Government to the recommendations contained in the Report were received vide O.M. dated 25th September, 2007. The Committee on Public Undertakings considered and adopted this Report at their sitting held on 24th April, 2008. The Minutes of the sitting are given in **Appendix – I.**

3. An analysis of the action taken by the Government on the recommendations contained in the 14th Report (2006-07) of the Committee is given in **Appendix -II**

New Delhi:
24 April, 2008
04 Vaisakha 1930 (S)

Rupchand Pal
Chairman,
Committee on Public Undertakings.

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by the Government on the recommendations contained in the Fourteenth Report (Fourteenth Lok Sabha) of the Committee on Public Undertakings (2006-2007) on National Highways Authority of India – National Highways Development Project (NHDP), Phase-I which was presented to Lok Sabha on 8th December, 2006.

2. Action Taken notes have been received from the Government in respect of all the 12 recommendations contained in the Report. These have been categorized as follows :

- (i) Recommendations/Observations that have been accepted by the Government : (Chapter II)

Sl. Nos.1,2,3,4,8,9,10,11 and 12 (Total 9)

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies :(Chapter III)

Sl. Nos. 5 and 6 (Total 2)

- (iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee : (Chapter IV)

Sl. Nos. 7 (Total 1)

- (iv) Recommendations/Observations in respect of which final replies of the Government are still awaited : (Chapter V)

Sl.Nos. Nil

3. The Committee will now deal with the action taken by the Government on some of the recommendations in the succeeding paragraphs.

Recommendation (Sl. No. 1)

4. Regarding delay in completion of NHDP, Phase-I, the Committee in their Fourteenth Report had recommended as follows:-

The Committee note that 'in principle approval' for NHDP, Phase-I was given by the Government in December 2000, covering a road length of 6,359 kms. NHAI was mandated to carry out this task with the target date for completion as June 2004. However, as on this target date, the NHAI

could complete only 29% of the total work. Thus, the achievement was far less than the targets fixed. The target date was subsequently revised to December 2005, overshooting the original schedule by 18 months. However, even the extended completion date of December 2005 could not be achieved by NHAI. As per the latest position made available to the Committee, 92.6% of the Golden Quadrilateral has been completed and the few balance portions of the work are likely to be stretched even to December 2008.

In this regard, the Committee note with concern that work on a few of the stretches out of the total of 175 stretches into which the entire project was divided, could start only after June 2004, which was the initial target date set out for completion of the entire project. Further, according to Audit observation, NHAI was required to award contracts for the entire Phase-I by March 2002. However, against this target, NHAI could award contracts only for a length of 4,863 km (76%) up to March 2002 and 5,628 km (88.5%) up to March 2004 whereas contracts for 380 km were not even awarded by June 2004, which was the originally scheduled date for completion of the entire Phase-I of NHDP. According to Audit, NHAI delayed the award of contracts after receipt of bids by 2 to 17 months beyond the bid validity periods.

Analyzing the reasons for delay in completion of NHDP Phase-I, the Committee note that the delays occurred broadly on account of pre-construction activities. These include acquisition of land due to procedural formalities, litigation and court cases; getting forest clearance; obtaining clearance/approvals from Railways for construction of Rail Over Bridges; shifting of utilities like electric lines, water pipe-lines, sewer lines etc; Factors like poor performance of the contractors, frequent stoppage of work by local population demanding additional underpasses/bypasses, flyovers, etc. also contributed to the delay. The Committee also take into account the observation of the Audit that at the time of sanction of NHDP Phase-I, 90% of the land was already acquired. However, factors like inability of contractors to synchronize resources, ineffective contract management by NHAI and Project Supervision Consultants, faulty and incorrect contract clauses, incorrect and incomplete data in the Detailed Project Reports also contributed to the delay.

The Committee note that the NHAI has justified the delay on the ground that a programme of this magnitude was unprecedented and the quantum of pre-construction activities involved in the project were unmatched to any project implemented in the past. Further, most of the pre-construction activities depended upon the cooperation of the State Governments, which was not forthcoming, and most State Governments were ill-

equipped with the resources required for such huge pre-construction activities. Thus, the progress of the NHDP was dependent on the cooperation by the State Governments, which was beyond the control of NHAI. However, where the delays were attributable to the contractors, NHAI had taken action against them by levying liquidated damages and terminating their contracts.

The Committee, therefore, are of the view that the main factor, which has contributed to the delay in implementation of Phase-I of the NHDP, is the slow process of land acquisition primarily caused due to the inaction on the part of the State Governments. From the status report as on 31 July, 2006 furnished by NHAI, 9.15% in Tamil Nadu, 4.83% in Maharashtra, 4.62% in West Bengal, 2% in Jharkhand, 1.57% in Karnataka, etc. (totaling 2.21% of the entire land to be acquired under NHDP Phase-I) of balance land is yet to be acquired from these State Governments. In this regard, the Committee note that the Ministry have now taken a number of measures for expeditious completion of Phase-I of the NHDP and its subsequent phases. These measures include authorizing the Department of Road Transport to issue land acquisition Notifications without reference to Ministry of Law by amending the Allocation of Business Rules; constitution of a Committee of Secretaries (COS) headed by Cabinet Secretary to resolve Centre-State issues and Inter-Ministerial coordination; appointment of Nodal officers to coordinate various matters for solving problems like land acquisition, shifting of utilities, forest and environmental clearance, posting of a Director level officer of Railways on deputation basis to NHAI for expediting approval of Rail Over Bridges, and reviewing the status of pre-construction activities in NHAI Headquarters on a fortnightly basis.

The Committee are of the view that roads are important infrastructure to facilitate economic development of the nation. The NHDP has been undertaken as a massive up gradation programme of high traffic density corridors of National Highways in the country. Therefore, the timely implementation of NHDP Phase-I is of utmost importance for smooth transportation of goods as well as offering safe and better riding quality to road users of the National Highways. Unfortunately, the delay factor has adversely affected toll revenue, traffic synchronization, and benefit to the road users as projected at the time of project approval. Though the Government/NHAI have sought to justify the delay, the fact remains that there were avoidable lapses on the part of the NHAI as well as the Government, which resulted in enormous delay in timely completion of NHDP Phase-I. In this direction, the Committee note with concern that the much-hyped Committee of Secretaries (COS) constituted to resolve Centre-State issues and Inter-Ministerial coordination held its first sitting only on 1 April, 2005 i.e. after five years of the launch of NHDP Phase-I.

As per the information furnished to the Committee, as on 31.7.2006, the said Committee has held only one further sitting on 3.11.2005. This is a serious reflection on the monitoring role of the Government for ensuring timely implementation of NHDP and removal of impediments. For instance, in the case of Tamil Nadu, 9.15% of the land as on 31 July 2006 was yet to be acquired. The same is the case with few other States also.

In the context of the above background, the Committee recommend that the following urgent steps be taken to ensure that the delay occurred in NHDP Phase-I is not repeated in subsequent phases of NHDP: -

- (i) NHAI should prepare monthly progress reports for each project/sub-project indicating clearly, the target date of completion, delay if any, reasons for delay, status of land acquisition, rehabilitation & resettlement, shifting of utilities, obtaining of environmental clearances, progress of litigation if any, the officers/agencies responsible for these activities, names of the state nodal officers and the officers/agencies associated with the sub-project.
- (ii) The above mentioned monthly progress reports should be considered by the NHAI Board where the areas of concern shall be identified along with the remedial measures to be taken. Thereafter, the said reports along with the action taken notes should be forwarded to the Ministry and the main highlights be brought to the notice of the Committee of Secretaries (COS).
- (iii) The Committee of Secretaries (COS) headed by the Cabinet Secretary should hold review meetings more frequently, say at least every quarter, so as to serve any useful purpose and address the issues requiring immediate Government attention.
- (iv) The nodal officers appointed by the concerned State Governments for coordinating and resolving the various problems relating to the land acquisition progress and other matters should furnish progress reports on monthly basis for review by the Chief Secretaries of the concerned States.
- (v) The existing procedures relating to land acquisition, shifting of utilities, obtaining forest clearances, etc. should be reviewed and updated on a continuous basis in the light of experience gained during implementation of various phases of the NHDP.

- (vi) A time limit for processing of bids for award of contracts must be fixed and should be strictly adhered to in order to avoid any delay in the award of contracts.
- (vii) The performance of contractors must be monitored on day-to-day basis and stiffer penalty be imposed if the contractors underperform and cause delay.
- (viii) The monitoring role of Project Implementation Units of NHAI should be strengthened and additional responsibilities be entrusted to them to cut short any sort of avoidable delays on account of any shortcomings on the part of Design Consultants, Project Supervision Consultants and the contractors etc.
- (ix) For expeditious acquisition of land, the National Highways Act, 1956 may be suitably amended prescribing *inter-alia* a time-limit for initiating the arbitration proceedings; acquisition through mutual consent to a limited extent; possibility of invoking an urgency clause as is available in the Land Acquisition Act for faster land acquisition process in some special cases, etc.

6. In their action taken reply to the recommendation of the Committee, the Government have stated as follows:

- (i) With regard to the recommendations, it is submitted that NHAI is preparing monthly progress report which gives information in most of the aspects mentioned in COPU's report e.g. the target date of completion, anticipated completion date and delay with respect to original completion, status of land acquisition state-wise, name of the agency responsible for implementation of the project – main civil work contractors, supervision consultants and DPR consultants. This report is circulated to all senior officials of NHAI, Department of Road Transport & Highways, Ministry of Finance, Ministry of Statistics and Programme Implementation, World Bank and ADB.

Monthly progress report of individual projects covering other aspects mentioned in the COPU's report are also prepared by the Supervision Consultant and submitted to the concerned officers in the HO and project site.

To improve the system further, NHAI has developed an On-line Real Time Project Monitoring System viz 'Computerized Project Information System - (CPIS)'. The CPIS will capture at one place the attributes mentioned in the COPU's recommendations. The information will be updated directly from the Project Site via Internet/Wide Area Network (WAN) set up by NHAI.

- (ii) With regards to recommendation that the monthly progress reports should be considered by the NHA Board, it is submitted that CGMs, Members and Chairman are regularly reviewing the reports / projects, carrying out site visits and holding meetings at site and in HO. The Board of NHA has also been periodically reviewing the progress of NHDP and giving directions for time and cost bound implementation of NHDP. Quarterly review of the projects is also done by the Secretariat of Committee on Infrastructure serviced by Planning Commission. The major impediments in the implementation of NHDP are being taken up from time to time by the NHA and the Ministry, with the Empowered Committee of Secretaries headed by Cabinet Secretary.
- (iii) With regards to recommendations of the Committee on Public Undertaking for frequent meetings of the Committee of Secretaries (COS) constituted by the Government to take up Centre-State and Inter-Ministerial issues, it is submitted that the meetings are held as and when required.
- (iv) With regards to recommendation of the Committee for review of progress reports by Chief Secretaries on monthly basis, it is submitted that the Chairman, NHA had written a D.O letter No.NHA/LE&EM/29/Policy/07, dated 29.1.2007 to Chief Secretaries of State Governments intimating them of above recommendation made by COPU and requesting that (i), monthly progress reports on land acquisition/ pre-construction be submitted by Nodal Officers to Chief Secretaries, and that (ii),Chief Secretaries review progress of land acquisition/pre-construction on monthly basis.
- (v) With regards to review of Existing procedures relating to land acquisition, utility shifting and obtaining forest clearances etc. it is submitted that several measures have been introduced to facilitate timely completion of pre-construction activities (which include land acquisition/utility shifting/obtaining forest clearance), as follows:-
 - (a) **Simplification of Procedure for issuing Notifications for acquisition of land;** Notifications for acquisition of land under Section 3 of NH Act were previously vetted from legal angle by Ministry of Law. This contributed to delay in issuing/publishing Notifications. Procedure for issue of such Notifications has been simplified, and they are now issued/published after being legally vetted internally by NHA.

(b) **Facilities provided to Project Implementation Units (PIUs);** In order to assist PIUs in performance of functions pertaining to land acquisition/pre-construction, each PIU has been authorized to engage one retired State Govt. Revenue Officer supported by one Surveyor/Amin for each district on contract. Proposals for engagement of additional staff required either because of large volume of work or because work has to be completed within a short time are considered on case to case basis. Total 127 retired State Government officials have so far been engaged in PIUs to facilitate land acquisition/ pre-construction activities.

(c) **Facilities provided to Competent Authority for land acquisition;** Provision of adequate staff and infrastructure to Competent Authorities for land acquisition is primarily the responsibility of concerned State Government. However, due to large volume of work or time constraints, Competent Authorities sometimes request NHAI for additional support.

Additional staff/infrastructure is provided to Competent Authorities in 178 projects (approx.) for specified periods within which land acquisition is required to be completed.

(d) **Appointment of State Level Coordinator for land acquisition/pre-construction;** NHAI HQ has nominated a Project Director located in the State to function as State Level Coordinator for Land Acquisition/Pre-construction, whose functions are as follows:-

- Collection of information from all PIUs in the State, on pending land acquisition matters for various projects, and forwarding the same to HQ as per specified formats.
- Coordination with State Government officers on regular basis for all matters pertaining to land acquisition.
- Ensuring timely coordination meetings at the State level to resolve pending issues.

(e) **Appointment of CGMs to manage/implement NHDP Projects in States;** NHAI has recently appointed CGMs to manage/implement NHDP Projects in States. These officers are responsible for coordinating land acquisition/pre-construction issues (pertinent to stretches within the State) between concerned Technical Division/Land Acquisition Division/State Level Coordinator/State Government Authorities.

- (f) **Formation of District Coordination Committees;** Land acquisition under NH Act 1956 is conducted primarily at district level. Accordingly, as a measure for strengthening District level mechanisms for land acquisition/pre-construction activities, Chairman has written to Chief Secretaries of Govts of States in which NHDP Projects are implemented requesting for constitution of District Coordination Committees (DCCs) for resolving issues related to land acquisition and other pre-construction activities. The DCCs are to be headed by District Magistrates and comprise NHAI's Project Director, Competent Authority for Land Acquisition, District Departmental heads of departments like PWD, Telephone, Electricity, Jal Nigam, and Municipality, and District Forest Officer. Meetings of DCC (to be held monthly, and as and when requisitioned by NHAI -PD) would go a long way in clearing hurdles coming in way of timely acquisition of land and completion of pre-construction activities (such as shifting of electric poles, telephone lines, water/sewage pipes, cutting of tress etc).
- (g) **Environment and Forest Clearance;** Ministry of Environment and Forests (MoEF), on the advice of Committee of Secretaries, has been holding regular meetings every month for expediting proposals of NHAI for environment clearance. There are, as such, no cases pending for environment clearance. With regard to forest clearance, NHAI is taking appropriate action (through Nodal Officers and Forest Departments of State Govts,) required to expeditiously obtain forest clearance.
- (vi) With regards to time limit for processing of bids for award of contracts, it is submitted that time schedule of 40 days has been fixed to cover the entire process from the date of receipt of bids till final award of contracts. This has been incorporated in Works Manual of NHAI (para 4.32) released recently. However, in case of externally aided projects, this time schedule will depend upon the time for approval of process at various stages by the aid agency such as World Bank, Asian Development Bank, etc.
- (vii) Regarding monitoring of performance of contractors it is submitted that the performance of the contractor is being monitored by the Supervision Consultant and Project Directors of the Project Implementation Units of NHAI on day-to-day basis. Periodic progress review meetings are also being held by Chairman, Members, CGMs and Project Director of Units with contractors and

Project Supervision Consultants. Penalty provision for default by the contractor is the integral part of the contract and suitable punitive action is also being taken. NHAI has already terminated 12 contracts of the defaulting contractors and levied liquidated damages in 6 contracts for delay in completion.

- (viii) It is submitted that vide Policy Circular No. 11041/21/2002/Admn dated 18/04/2006, duties and responsibilities to the Project Directors of PIUs have been specified, which addresses the concern expressed by the committee. The content of this circular has also been incorporated in NHAI's works manual.
- (ix) With regards to expeditious acquisition of land, through an amendment of National Highways Act, 1956, acquisition through mutual consent to a limited extent and possibility of invoking an urgency clause as is available in Land Acquisition Act, it is submitted that a draft/proposed amendment to National Highways Act requiring, *inter-alia*, arbitration proceedings to commence within 03 months of declaration of award acquiring the land is currently under finalization by the Authority. For expeditious action, we have issued policy circular for acquisition of land through mutual consent upto 5% of total land required.

7. In this connection, Audit has given the following remarks on the reply of the Government: -

The action taken by the Authority has been verified and the following observation is made:

- (i) Although the Authority has developed the online Real Time Project Monitoring system viz. Computerized Project Information System, it is yet to be made functional. Hence, Para remains.
- (ii) The reply has been verified and found correct.
- (iii) The reply has been verified and it was found that the meetings of COS are not held as recommended by COPU viz. atleast once in every quarter. Two meetings were only held in 2006 and 2007 respectively.
- (iv) The actual progress in this regard will be watched in audit. Hence, Para remains.
- (v)(a) The reply of the Authority has been verified and it was found that the Authority has issued circular regarding simplification of procedure.

- (b&c) The reply of the Authority has been verified and it was found that the Authority has appointed employees on contract basis to quicken the activities relating to land acquisition and other pre-construction activities.
- (d) The reply has been verified and found correct.
- (e) The reply has been verified and found correct.
- (f) The reply has been verified and found correct.
- (g) Actual effect of this action would be verified in due course.
- (vi) The reply has been verified and found correct.
- (vii) The reply has been verified and found correct.
- (viii) The reply has been verified and found correct.
- (ix) The Authority is yet to finalize the proposal .This will be watched in Audit. Regarding issuances of policy circular for acquisition of land through mutual consent upto 5% of total land required, was found correct.

8. The Ministry of Shipping, Road Transport and Highways have further commented on the remarks of office of C&AG as under:-

- (i) NHAI has already developed the online Real Time Project Monitoring system viz. Computerized Project Information System(CPIS) as admitted by Audit also. It has been observed by Audit that it is yet to be made functional. The present status of development and installation of CPIS is that the consultant has finished the phase I of CPIS and its application has also been installed on the NHAI server. Training on CPIS completed. Audit may watch its implementation.
- (ii) Action Taken Report (ATR) has been verified and found correct by Audit. Hence no further comment.
- (iii) Cabinet Secretariat has been apprised about the recommendation of Committee on Public Undertakings to hold review meetings more frequently, say at least every quarter, so as to serve useful purpose and address the issues requiring immediate government attention.
- (iv) Audit has desired that the progress will be watched by them. Hence no comments.
- (v) (a,b&c)The ATR have been verified by the Audit without any further comments.
- (d,e&f) The Action Taken Report (ATR) has been verified and found correct by Audit. Hence no comment.
- (g) Audit has desired that the progress will be watched by them in future audit. Hence no comment.
- (vi, vii & viii)The Action Taken Report (ATR) submitted has been verified and found correct by Audit. Hence no comments.

- (x) Audit has desired that the progress will be watched by them in subsequent audit. Hence no comments.

[Ministry of Shipping, Road Transport and Highways, (Deptt. Of Road Transport & Highways.) O.M No.--
RW/H-11016/47/2006-PIC Dated 25.9.2007].

Comments of the Committee

9. The Committee in their original Report had observed that the delays in completion of National Highways Development Project (NHDP), Phase – I were broadly on account of non-synchronization of pre-construction activities including delay in land-acquisition, environmental clearances, shifting of utilities, poor performance of the contractors and consultants, inconsistencies in the contract documents etc. Therefore, while emphasizing on the fact that roads are important infrastructure to facilitate economic development of the nation, the Committee had recommended a number of urgent steps to be undertaken by NHAI for ensuring that the delays occurred in NHDP, Phase-I are not repeated in implementation of subsequent phases of NHDP. These, *inter-alia*, included preparation of monthly progress reports for each project, appointment of nodal officers for facilitating issues regarding land acquisition, more frequent meetings of the Committee of Secretaries (CoS), regular monitoring of contractors and strengthening of the monitoring role of the Project Implementation Units etc.

The Committee appreciate that most of the steps recommended by them have been accepted and implemented by NHAI to improve their

functioning. However, the Committee would like to comment upon a few issues, which have emerged out of the Action Taken Replies.

The Committee observe from the Action Taken Replies that NHAI has developed an Online Real Time Project Monitoring System called 'Computerized Project Information System' (CPIS) which would capture at one place the attributes of each project / sub-project viz., the target date of completion, delay if any and reasons therefor, status of land acquisition, rehabilitation & resettlement, shifting of utilities, obtaining of environmental clearances, progress of litigation, if any, the officers/agencies responsible for these activities, names of the state nodal officers etc. However, the Audit in their vetting of the said reply has observed that the said system (CPIS) is yet to be made functional. According to the NHAI, Phase – I of CPIS has been finished, its application has been installed on the NHAI server and the training on CPIS has also been completed. In this regard, the Committee express satisfaction that the new system-CPIS installed by the NHAI would not only be useful for effective monitoring but will also help in timely identification and correction of errors. The Committee would urge the NHAI to implement the CPIS expeditiously so that monitoring of all the projects and sub-projects is strengthened.

The committee had recommended that frequent review meetings by the Committee of Secretaries are necessary to resolve inter-State / inter-Ministerial issues. In response thereto, the Ministry's reply that meetings

are held as and when required seems to be very casual because only two such meetings were held during 2006 and 2007. The Committee, while strongly disapproving this kind of lackadaisical reply of the Government, reiterate their earlier recommendation that the Committee of Secretaries should hold review meetings more frequently and play a positive role in expediting the implementation of NHDP. The Committee is of the opinion that if the Committee of Secretaries does not play its assigned role, the bottlenecks in the execution of NHDP will persist and the project will suffer.

As regards their recommendation on expeditious acquisition of land, the Committee had recommended that the National Highways Act, 1956, may be suitably amended prescribing *inter-alia*, a time-limit for initiating the arbitration proceedings; acquisition through mutual consent to a limited extent; possibility of invoking an urgency clause etc. The Committee note from the Action Taken Reply that while NHAI has issued a policy circular for acquisition of land through mutual consent upto 5% of total land required, the amendment to National Highways Act, 1956 is under finalization. The Committee urge the Government to finalize the proposed amendment as early as possible to enable faster removal of bottlenecks with regard to land acquisition.

Recommendation (Sl. No. 7)

10. In connection with overpayments made to the contractors on account of Excise and Customs Duty Exemptions, the Committee had originally recommended the following:-

The Audit in their report has observed that while calling bids for stretches funded by the World Bank, NHAI failed to include a clause in the Notice

Inviting Tenders (NIT) that the bidders should quote the prices excluding customs/excise duties, as exemptions were available to them. Also, the provisions for payment of price escalation incorporated in the agreements did not provide for exclusion of excise duty element from the basic price of raw material agreed to. According to Audit, the omission has resulted in NHAI not getting the benefit of duty element and resultant lower cost. Further, NHAI issued exemption certificates to five contractors, after finalizing the contract for availing the duty exemption but could not recover the proportionate duty element from the bills of contractors in the absence of necessary stipulation. This resulted in undue benefit of Rs. 30.69 crore to these five contractors.

The NHAI/Ministry have sought to justify their position by submitting that such exemptions were already in existence before the contracts were awarded to the contractors. It would, therefore, not be legal for NHAI to recover the benefit availed by contractors in view of the exemption Notifications of the Government of India since NHAI's action would restrict the benefit given by the Sovereign.

The Audit has, however, countered the above contention on the ground that the Government of India vide their Notification No. 108/95-C.E. dated 28.8.1995 issued in exercise of powers conferred by Section 5A (1) of the Central Excise and Salt Act, 1944 read with Section 3(3) of the Additional Duties of Excise (Good of Special Importance) Act, 1957, exempted from payment of excise duty all goods that are supplied to the projects financed by United Nations or International Organizations and approved by the Government of India. As such, the duty exemption is available to the projects and not to the contractors. Audit was not provided any documentary evidence that the excise/customs duty elements were duly factored in at the time of award of contract. In the absence of any clear stipulation in this regard in the contract, what could happen is that the contractors would receive full payments inclusive of the duty element and they would receive the refund from revenue authorities and not pass on the same to NHAI. In this way the contractors would gain and NHAI would lose. Normally, the provision relating to duty exemptions should be a routine provision incorporated in the Notice Inviting Tenders and then the contractors are expected to pay back to the client (NHA, in this case) the

duty refund received by them from the revenue authorities. NHAI should have exercised due professional care in ensuring and documenting this aspect before releasing the Duty Exemption Certificate.

Taking into consideration the above-mentioned positions taken by the Ministry/NHAI vis-à-vis the C&AG's contention, the Committee feel that the whole issue needs to be looked into.

11. In their action taken reply to the recommendation of the Committee, the Government have stated as follows:

As directed by the Committee, the whole issue has been reviewed and it is submitted that in respect of the Externally Aided Projects (EAPs) [like World Bank, Asian Development Bank etc], exemption from payment of excise duty and custom duty were admissible under notification no. 108/95-CE dt. 28.5.1995 and Notification No. 84/97-Custom, dated 11.11.1997, respectively as amended from time to time i.e. well before the bids for NHDP Phase I were invited by NHAI. In clause 73.2 of the Condition of Particular Application (COPA) it was stipulated that "the prices bid by the contractor shall include all customs duties, import duties, business taxes, and income and other taxes local/State Government Octroi, royalty etc. that may be levied in accordance with the laws and regulations being in force on the date 28 days prior to the latest date for submission of bid". Further in COPA clause 73.4, the contractors were requested to verify from the Ministry of Finance (Department of Revenue) of the latest position of exemptions available. Thus, it may be submitted that the excise/custom duty exemptions being in existence much before the contracts were awarded to the contractors can not be presumed to not having been factored in the bids. In view of this it can not be said that the action of NHAI resulted into undue benefits to the contractors. As regards the observation that the duty exemption is available to the projects and not to the contractors, it is submitted that such exemptions were given by Govt. of India in case of the projects of International Lending Agencies to bring a level playing field amongst the Contractors from Member Countries of such International Lending Agencies and Indian Contractors.

Standard bidding documents adopted by NHAI in August, 2004 also stipulates in Instructions to Bidders , under clause 14.3 that "all duties, taxes and other levies payable by the Contractor under the contract, or for any other cause as of the date 28 days prior to the deadline for submission of the bids, shall be included in the rates and prices and the total bid price submitted by the bidder and the evaluation and comparison of bids by the Employer shall be made accordingly".

However, for the sake of further clarity, NHAI has initiated action to incorporate the following sub-clause under Clause 14.3.1 of Standard Bidding Documents, "Bidders may ascertain the excise and custom duty

exemption available for this project as per the relevant policy of the Government of India prevailing 28 days before submission of bid.”

12. In this regard, Audit has given the following remarks on the reply of the Government: -

While inviting bids, the Authority should clearly indicate the various customs /excise duty exemptions available for the project and direct the bidders to quote accordingly. Instead of taking action on these lines, the Authority proposes to include clause 14.3.1 which is vague as it does not specifically mention whether excise duty and custom duty exemption were available or not for bids. As the reply of the Authority does not comply with the recommendation, the Para may stand.

13. The Ministry of Shipping, Road Transport and Highways has further commented on the remarks of office of C&AG, as under:-

It has already been submitted that to inform the bidders about the exemption available, following will be incorporated in Para 14.3. of Instruction to bidders:-

“Bidders may ascertain the excise and custom duty exemption available for this project as per the relevant policy of the Government of India prevailing 28 days before submission of bid.”

Basic idea of the clause is that the bidders should take into account while bidding, the exemptions available for custom and excise duty as per the relevant Act. The laws keeps on changing, thus any detailed standard disclosure may not be possible as in the event of any unfavourable changes about the custom/ excise duty, the contractor may claim against NHAI to compensate for any unfavourable changes.

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Comments of Committee

14. The Committee in their original report had observed that NHAI had issued exemption certificates to five contractors after finalizing the contract for availing the Duty Exemption but could not recover the proportionate duty element amounting to Rs.30.69 crore from the bills of

contractors in the absence of necessary stipulation in the Notice Inviting Tender (NIT). While taking note of the Audit observation that no documentary evidence is available to ascertain whether the excise/customs duty elements were duly factored in at the time of award of contracts, the Committee had felt that NHAI should have exercised due professional care in ensuring and documenting this aspect before releasing the Duty Exemption Certificates and had recommended that the whole issue be looked into.

However, the Committee note that the Action Taken Reply received from the Government is far from satisfactory and it seems that the Government has completely disregarded the seriousness of the issue. In this regard, the Committee note that the NHAI has simply proposed to incorporate a new sub-clause under clause 14.3.1 of the Standard Bidding Documents, namely “Bidders may ascertain the excise and custom duty exemption available for this project as per the relevant policy of the Govt. of India prevailing 28 days before submission of bid”. The Committee find that this proposal is inadequate and vague as it neither specifically mentions whether excise/customs duty exemption were available for the project nor does it direct the bidders to quote accordingly. The Committee, therefore, feel that this new sub-clause would not serve the purpose of ensuring transparency regarding quotation of prices in specific bids for the internationally funded projects involving customs/excise duty exemptions.

In order to avoid controversy and ensure transparency in the bidding process, the Committee recommend that the NIT should invariably include in unambiguous terms, the prices inclusive of Customs/Excise Duty vis-à-vis prices exclusive of such duty. By doing so, NHAI would be able to avoid recurrence of such imbroglio.

CHAPTER II

RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation (Sl. No. 1)

Delay in Completion of NHDP, Phase-I

The Committee note that 'in principle approval' for NHDP, Phase-I was given by the Government in December 2000, covering a road length of 6,359 kms. NHA I was mandated to carry out this task with the target date for completion as June 2004. However, as on this target date, the NHA I could complete only 29% of the total work. Thus, the achievement was far less than the targets fixed. The target date was subsequently revised to December 2005, overshooting the original schedule by 18 months. However, even the extended completion date of December 2005 could not be achieved by NHA I. As per the latest position made available to the Committee, 92.6% of the Golden Quadrilateral has been completed and the few balance portions of the work are likely to be stretched even to December 2008.

In this regard, the Committee note with concern that work on a few of the stretches out of the total of 175 stretches into which the entire project was divided, could start only after June 2004, which was the initial target date set out for completion of the entire project. Further, according to Audit observation, NHA I was required to award contracts for the entire Phase-I by March 2002. However, against this target, NHA I could award contracts only for a length of 4,863 km (76%) up to March 2002 and 5,628 km (88.5%) up to March 2004 whereas contracts for 380 km were not even awarded by June 2004, which was the originally scheduled date for completion of the entire Phase-I of NHDP. According to Audit, NHA I delayed the award of contracts after receipt of bids by 2 to 17 months beyond the bid validity periods.

Analyzing the reasons for delay in completion of NHDP Phase-I, the Committee note that the delays occurred broadly on account of pre-construction activities. These include acquisition of land due to procedural formalities, litigation and court cases; getting forest clearance; obtaining clearance/approvals from Railways for construction of Rail Over Bridges; shifting of utilities like electric lines, water pipe-lines, sewer lines etc; Factors like poor performance of the contractors, frequent stoppage of work by local population demanding additional underpasses/bypasses, flyovers, etc. also contributed to the delay. The Committee also take into account the observation of the Audit that at the time of sanction of NHDP Phase-I, 90% of the land was already acquired. However, factors like inability of contractors to synchronize resources, ineffective contract management by NHA I and Project Supervision Consultants, faulty and incorrect contract clauses, incorrect and incomplete data in the Detailed Project Reports also contributed to the delay.

The Committee note that the NHAI has justified the delay on the ground that a programme of this magnitude was unprecedented and the quantum of pre-construction activities involved in the project were unmatched to any project implemented in the past. Further, most of the pre-construction activities depended upon the cooperation of the State Governments, which was not forthcoming, and most State Governments were ill-equipped with the resources required for such huge pre-construction activities. Thus, the progress of the NHDP was dependent on the cooperation by the State Governments, which was beyond the control of NHAI. However, where the delays were attributable to the contractors, NHAI had taken action against them by levying liquidated damages and terminating their contracts.

The Committee, therefore, are of the view that the main factor, which has contributed to the delay in implementation of Phase-I of the NHDP, is the slow process of land acquisition primarily caused due to the inaction on the part of the State Governments. From the status report as on 31 July, 2006 furnished by NHAI, 9.15% in Tamil Nadu, 4.83% in Maharashtra, 4.62% in West Bengal, 2% in Jharkhand, 1.57% in Karnataka, etc. (totaling 2.21% of the entire land to be acquired under NHDP Phase-I) of balance land is yet to be acquired from these State Governments. In this regard, the Committee note that the Ministry have now taken a number of measures for expeditious completion of Phase-I of the NHDP and its subsequent phases. These measures include authorizing the Department of Road Transport to issue land acquisition Notifications without reference to Ministry of Law by amending the Allocation of Business Rules; constitution of a Committee of Secretaries (COS) headed by Cabinet Secretary to resolve Centre-State issues and Inter-Ministerial coordination; appointment of Nodal officers to coordinate various matters for solving problems like land acquisition, shifting of utilities, forest and environmental clearance, posting of a Director level officer of Railways on deputation basis to NHAI for expediting approval of Rail Over Bridges, and reviewing the status of pre-construction activities in NHAI Headquarters on a fortnightly basis.

The Committee are of the view that roads are important infrastructure to facilitate economic development of the nation. The NHDP has been undertaken as a massive up gradation programme of high traffic density corridors of National Highways in the country. Therefore, the timely implementation of NHDP Phase-I is of utmost importance for smooth transportation of goods as well as offering safe and better riding quality to road users of the National Highways. Unfortunately, the delay factor has adversely affected toll revenue, traffic synchronization, and benefit to the road users as projected at the time of project approval. Though the Government/NHAI have sought to justify the delay, the fact remains that there were avoidable lapses on the part of the NHAI as well as the Government, which resulted in enormous delay in timely completion of NHDP Phase-I. In this direction, the Committee note with concern that the much-hyped

Committee of Secretaries (COS) constituted to resolve Centre-State issues and Inter-Ministerial coordination held its first sitting only on 1 April, 2005 i.e. after five years of the launch of NHDP Phase-I. As per the information furnished to the Committee, as on 31.7.2006, the said Committee has held only one further sitting on 3.11.2005. This is a serious reflection on the monitoring role of the Government for ensuring timely implementation of NHDP and removal of impediments. For instance, in the case of Tamil Nadu, 9.15% of the land as on 31 July 2006 was yet to be acquired. The same is the case with few other States also.

In the context of the above background, the Committee recommend that the following urgent steps be taken to ensure that the delay occurred in NHDP Phase-I is not repeated in subsequent phases of NHDP: -

- (i) NHAI should prepare monthly progress reports for each project/sub-project indicating clearly, the target date of completion, delay if any, reasons for delay, status of land acquisition, rehabilitation & resettlement, shifting of utilities, obtaining of environmental clearances, progress of litigation if any, the officers/agencies responsible for these activities, names of the state nodal officers and the officers/agencies associated with the sub-project.
- (ii) The above mentioned monthly progress reports should be considered by the NHAI Board where the areas of concern shall be identified along with the remedial measures to be taken. Thereafter, the said reports along with the action taken notes should be forwarded to the Ministry and the main highlights be brought to the notice of the Committee of Secretaries (COS).
- (iii) The Committee of Secretaries (COS) headed by the Cabinet Secretary should hold review meetings more frequently, say at least every quarter, so as to serve any useful purpose and address the issues requiring immediate Government attention.
- (iv) The nodal officers appointed by the concerned State Governments for coordinating and resolving the various problems relating to the land acquisition progress and other matters should furnish progress reports on monthly basis for review by the Chief Secretaries of the concerned States.
- (v) The existing procedures relating to land acquisition, shifting of utilities, obtaining forest clearances, etc. should be reviewed and updated on a continuous basis in the light of experience gained during implementation of various phases of the NHDP.
- (vi) A time limit for processing of bids for award of contracts must be fixed and should be strictly adhered to in order to avoid any delay in the award of contracts.

- (vii) The performance of contractors must be monitored on day-to-day basis and stiffer penalty be imposed if the contractors underperform and cause delay.
- (viii) The monitoring role of Project Implementation Units of NHAI should be strengthened and additional responsibilities be entrusted to them to cut short any sort of avoidable delays on account of any shortcomings on the part of Design Consultants, Project Supervision Consultants and the contractors etc.
- (ix) For expeditious acquisition of land, the National Highways Act, 1956 may be suitably amended prescribing *inter-alia* a time-limit for initiating the arbitration proceedings; acquisition through mutual consent to a limited extent; possibility of invoking an urgency clause as is available in the Land Acquisition Act for faster land acquisition process in some special cases, etc.

Reply of the Government

- (i) With regard to the recommendations, it is submitted that NHAI is preparing monthly progress report which gives information in most of the aspects mentioned in COPU's report e.g. the target date of completion, anticipated completion date and delay with respect to original completion, status of land acquisition state-wise, name of the agency responsible for implementation of the project – main civil work contractors, supervision consultants and DPR consultants. This report is circulated to all senior officials of NHAI, Department of Road Transport & Highways, Ministry of Finance, Ministry of Statistics and Programme Implementation, World Bank and ADB.

Monthly progress report of individual projects covering other aspects mentioned in the COPU's report are also prepared by the Supervision Consultant and submitted to the concerned officers in the HO and project site.

To improve the system further, NHAI has developed an On-line Real Time Project Monitoring System viz 'Computerized Project Information System - (CPIS)'. The CPIS will capture at one place the attributes mentioned in the COPU's recommendations. The information will be updated directly from the Project Site via Internet/Wide Area Network (WAN) set up by NHAI.

- (ii) With regards to recommendation that the monthly progress reports should be considered by the NHAI Board, it is submitted that CGMs, Members and Chairman are regularly reviewing the reports / projects, carrying out site visits and holding meetings at site and in HO. The Board of NHAI has also been periodically reviewing the progress of NHDP and giving directions for time and cost bound implementation of NHDP. Quarterly review of the projects is also done by the Secretariat of Committee on Infrastructure serviced by Planning Commission. The major impediments in the

implementation of NHDP are being taken up from time to time by the NHAI and the Ministry, with the Empowered Committee of Secretaries headed by Cabinet Secretary.

- (iii) With regards to recommendations of the Committee on Public Undertaking for frequent meetings of the Committee of Secretaries (COS) constituted by the Government to take up Centre-State and Inter-Ministerial issues, it is submitted that the meetings are held as and when required.
- (iv) With regards to recommendation of the Committee for review of progress reports by Chief Secretaries on monthly basis, it is submitted that the Chairman, NHAI had written a D.O letter No.NHAI/LE&EM/29/Policy/07, dated 29.1.2007 to Chief Secretaries of State Governments intimating them of above recommendation made by COPU and requesting that (i), monthly progress reports on land acquisition/ pre-construction be submitted by Nodal Officers to Chief Secretaries, and that (ii), Chief Secretaries review progress of land acquisition/pre-construction on monthly basis.
- (V) With regards to review of Existing procedures relating to land acquisition, utility shifting and obtaining forest clearances etc. it is submitted that the several measures have been introduced to facilitate timely completion of pre-construction activities (which include land acquisition/utility shifting/obtaining forest clearance), as follows:-

(a) **Simplification of Procedure for issuing Notifications for acquisition of land;** Notifications for acquisition of land under Section 3 of NH Act were previously vetted from legal angle by Ministry of Law. This contributed to delay in issuing/publishing Notifications. Procedure for issue of such Notifications has been simplified, and they are now issued/published after being legally vetted internally by NHAI.

(b) **Facilities provided to Project Implementation Units (PIUs);** In order to assist PIUs in performance of functions pertaining to land acquisition/pre-construction, each PIU has been authorized to engage one retired State Govt. Revenue Officer supported by one Surveyor/Amin for each district on contract. Proposals for engagement of additional staff required either because of large volume of work or because work has to be completed within a short time are considered on case to case basis. Total 127 retired State Government officials have so far been engaged in PIUs to facilitate land acquisition/ pre-construction activities.

(c) **Facilities provided to Competent Authority for land acquisition;** Provision of adequate staff and infrastructure to Competent Authorities for land acquisition is primarily the responsibility of concerned State Government. However, due to large volume of work or time constraints, Competent Authorities sometimes request NHAI for additional support.

Additional staff/infrastructure is provided to Competent Authorities in 178 projects (approx.) for specified periods within which land acquisition is required to be completed.

(d) Appointment of State Level Coordinator for land acquisition/pre-construction; NHAI HQ has nominated a Project Director located in the State to function as State Level Coordinator for Land Acquisition/Pre-construction, whose functions are as follows:-

- Collection of information from all PIUs in the State, on pending land acquisition matters for various projects, and forwarding the same to HQ as per specified formats.
- Coordination with State Government officers on regular basis for all matters pertaining to land acquisition.
- Ensuring timely coordination meetings at the State level to resolve pending issues.

(e) Appointment of CGMs to manage/implement NHDP Projects in States; NHAI has recently appointed CGMs to manage/implement NHDP Projects in States. These officers are responsible for coordinating land acquisition/pre-construction issues (pertinent to stretches within the State) between concerned Technical Division/ Land Acquisition Division/State Level Coordinator/State Government Authorities.

(f) Formation of District Coordination Committees; Land acquisition under NH Act 1956 is conducted primarily at district level. Accordingly, as a measure for strengthening District level mechanisms for land acquisition/pre-construction activities, Chairman has written to Chief Secretaries of Govts of States in which NHDP Projects are implemented requesting for constitution of District Coordination Committees (DCCs) for resolving issues related to land acquisition and other pre-construction activities. The DCCs are to be headed by District Magistrates and comprise NHAI's Project Director, Competent Authority for Land Acquisition, District Departmental heads of departments like PWD, Telephone, Electricity, Jal Nigam, and Municipality, and District Forest Officer. Meetings of DCC (to be held monthly, and as and when requisitioned by NHAI PD) would go a long way in clearing hurdles coming in way of timely acquisition of land and completion of pre-construction activities (such as shifting of electric poles, telephone lines, water/sewage pipes, cutting of tress etc).

- (g) **Environment and Forest Clearance;** Ministry of Environment and Forests (MoEF), on the advice of Committee of Secretaries, has been holding regular meetings every month for expediting proposals of NHAI for environment clearance. There are, as such, no cases pending for environment clearance. With regard to forest clearance, NHAI is taking appropriate action (through Nodal Officers and Forest Departments of State Govts,) required to expeditiously obtain forest clearance.
- (vi) With regards to time limit for processing of bids for award of contracts, it is submitted that time schedule of 40 days has been fixed to cover the entire process from the date of receipt of bids till final award of contracts. This has been incorporated in Works Manual of NHAI (para 4.32) released recently. However, in case of externally aided projects, this time schedule will depend upon the time for approval of process at various stages by the aid agency such as World Bank, Asian Development Bank, etc.
- (vii) Regarding monitoring of performance of contractors it is submitted that the performance of the contractor is being monitored by the Supervision Consultant and Project Directors of the Project Implementation Units of NHAI on day-to-day basis. Periodic progress review meetings are also being held by Chairman, Members, CGMs and Project Director of Units with contractors and Project Supervision Consultants. Penalty provision for default by the contractor is the integral part of the contract and suitable punitive action is also being taken. NHAI has already terminated 12 contracts of the defaulting contractors and levied liquidated damages in 6 contracts for delay in completion.
- (viii) It is submitted that vide Policy Circular No. 11041/21/2002/Admn dated 18/04/2006, duties and responsibilities to the Project Directors of PIUs have been specified, which addresses the concern expressed by the committee. The content of this circular has also been incorporated in NHAI's works manual.
- (ix) With regards to expeditious acquisition of land, through an amendment of National Highways Act, 1956, acquisition through mutual consent to a limited extent and possibility of invoking an urgency clause as is available in Land Acquisition Act, it is submitted that a draft/proposed amendment to National Highways Act requiring, *inter-alia*, arbitration proceedings to commence within 03 months of declaration of award acquiring the land is currently under finalization by the Authority. For expeditious action, we have issued policy circular for acquisition of land through mutual consent upto 5% of total land required.

Remarks of Office of C&AG on the Reply of the Government

The action taken by the Authority has been verified and the following observation is made:

- (i) Although the Authority has developed the online Real Time Project Monitoring system viz. Computerized Project Information System, it is yet to be made functional. Hence, Para remains.
- (ii) The reply has been verified and found correct.
- (iii) The reply has been verified and it was found that the meetings of COS are not held as recommended by COPU viz. atleast once in every quarter. Two meetings were only held in 2006 and 2007 respectively.
- (iv) The actual progress in this regard will be watched in audit. Hence, Para remains.
- (v)(a) The reply of the Authority has been verified and it was found that the Authority has issued circular regarding simplification of procedure.
- (b&c) The reply of the Authority has been verified and it was found that the Authority has appointed employees on contract basis to quicken the activities relating to land acquisition and other pre-construction activities.
- (d) The reply has been verified and found correct.
- (e) The reply has been verified and found correct.
- (f) The reply has been verified and found correct.
- (g) Actual effect of this action would be verified in due course.
- (vi) The reply has been verified and found correct.
- (vii) The reply has been verified and found correct.
- (viii) The reply has been verified and found correct.
- (ix) The Authority is yet to finalize the proposal .This will be watched in Audit. Regarding issuances of policy circular for acquisition of land through mutual consent upto 5% of total land required, was found correct.

Comments of the Ministry on the remarks of office of C&AG

- (i) NHAI has already developed the online Real Time Project Monitoring system viz. Computerized Project Information System(CPIS) as admitted by Audit also. It has been observed by Audit that it is yet to be made functional. The present status of development and installation of CPIS is that the consultant has finished the phase I of CPIS and its application has also been installed on the NHAI server. Training on CPIS completed. Audit may watch its implementation.
- (ii) Action Taken Report (ATR) has been verified and found correct by Audit. Hence no further comment.

- (iii) Cabinet Secretariat has been apprised about the recommendation of Committee on Public Undertakings to hold review meetings more frequently, say at least every quarter, so as to serve useful purpose and address the issues requiring immediate government attention.
- (iv) Audit has desired that the progress will be watched by them. Hence no comments.
- (v) (a,b&c) The ATR have been verified by the Audit without any further comments.
- (d,e&f) The Action Taken Report (ATR) has been verified and found correct by Audit. Hence no comment.
- (g) Audit has desired that the progress will be watched by them in future audit. Hence no comment.
- (vi, vii & viii) The Action Taken Report (ATR) submitted has been verified and found correct by Audit. Hence no comments
- (ix) Audit has desired that the progress will be watched by them in subsequent audit. Hence no comments

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Comments of the Committee

Please see paragraph No. 9 of Chapter I of the Report.

Recommendation (Sl.No.2)

Performance of Detailed Project Report (DPR) Consultants

The Committee note that the execution of any project initially starts with the preparation of the Detailed Project Report. The Detailed Project Report primarily consists of designs, quantities of works and cost estimates etc. involved in the execution of a project. With this sole purpose, the DPR Consultants are appointed by NHAI for preparing various Detailed Project Reports. The Audit has pointed out that the NHAI did not address the risks associated with the terms of contracts and performance of DPR Consultants with adequate attention, which ultimately became the prime reason for time and cost overrun in execution of Phase-I of NHDP. The Audit has further pointed out that DPRs were deficient in terms of precise items of works; land to be acquired; sub-soil investigations, bridge design; correct technical specifications; shifting of utilities and designs of various key items of works etc.

The NHAI has tried to justify the deficiencies in DPRs on the grounds that – quantities in highways projects cannot be estimated with full accuracy; the site conditions dictate some changes from the original quantities; additional facilities

are created due to public pressure and additional features are included for safety considerations which might not have been envisaged at the DPR stage etc. The NHAI has, however, admitted that there have been instances where DPRs have been found wanting and the action has been taken against the defaulting DPR consultants. The Committee fully agree with the recommendations made by the Audit in their Report that – NHAI needs to frame and issue guidelines/ policy directives to the DPR consultants to ensure uniform design practices, to initiate action against the DPR consultants in case of deficiencies due to negligence and to install a system where DPRs are reviewed before commencement of tendering process to avoid large variations etc.

In this direction, the Committee note with satisfaction that NHAI has since strengthened the system by revamping the system of DPR preparation, providing for peer review of DPRs and associating the Field Officers of NHAI in preparation of DPRs. The performance of DPR consultants is now watched carefully and apart from performance security, provisions have also been made for penalty/debarment in case of delay in preparation of DPRs; variation in DPRs and actual quantity; proof checking of major structures etc. Further, DPR consultants are now required to furnish an Indemnity Bond to take care of any shortcomings. The Committee while approving the above-mentioned remedial measures recommend that the same should be reviewed periodically during the implementation of subsequent phases of NHDP.

Reply of the Government

It is submitted that suggestive checklist/ guidelines has been provided in the NHAI Works Manual, 2006 for monitoring the performance of design consultants and at the end of every job, Performance Appraisal Report of the consultant will be written by the GM, reviewed by the CGM and countersigned by Member, NHAI and this report shall be attached to the consultant's dossier.

Remarks of Office of C&AG on the Reply of the Government

The reply has been verified and found correct in respect of guidelines provided in the Works Manual. Regarding Performance Appraisal Report of the Consultant, the Authority is yet to start this practice. Hence, this would be watched during subsequent audit.

Comments of the Ministry on the remarks of office of C&AG

Audit has desired that the progress regarding Performance Appraisal Report of the consultant will be watched by them in subsequent Audit. Hence no comments.

Recommendation (Sl.No.3)

Performance of Project Supervision Consultants (PSCs)

Project Supervision Consultants (PSCs) are responsible for the overall supervision of the works related with project implementation. The PSCs are appointed by NHAI through a competitive selection procedure. The PSCs administer the contracts. Day to day activities like monitoring the progress and quality, measurement of works, certification of payment etc. are performed by them. In addition, the PSCs recommend extension of time and variations to the contracts etc.

The Committee note that the Audit in their report has pointed out that NHAI did not address the risk associated with the terms of contract and performance of PSCs with adequate attention which resulted in time and cost-overrun. The NHAI failed to determine comprehensively the terms of reference of the PSCs, which did not provide for performance warranty and penalties for underperformance. The performance of PSCs was also found wanting in overall supervision of the projects, in following quality assurance procedures, verification of works and bills, variations in the works, determination of rates of payment for varied quantities, approval of the sub-contractors, recommendations on Extension of Time (EOT) and compliance to the terms of contract by the civil contractors.

In this context, the Committee note that NHAI has admitted to the existence of certain shortcomings in the contract documents entered into with the PSCs inasmuch as the requirements of seeking client's approval were not very clearly spelt out. As such, various consultants took varying stands on the interpretation of clauses relating to variations and extensions of time and interpretation of the ground conditions leading to inefficient contract management and non-compliance of the contract provisions. In many cases, the items were approved by the Consultants without obtaining prior technical approval from NHAI. As regards the action initiated by the NHAI against the erring PSCs, the Committee observe that based on the severity of non-compliance, punitive measures have been undertaken by NHAI including debarment of the consultants for participating in future contracts and for recovering damages for negligence and misconduct.

The Committee note that as per the reply of NHAI, the above shortcomings have now been properly addressed and the standard contract documents for civil contracts as well as consultancy contracts now contain explicit provisions in this regard. Now, in case of breach of contract provisions by PSCs, various remedies like encashment of bank guarantees and recourse to Professional Liability Insurance will be resorted to. Further, NHAI has recently formulated a policy according to which the performance of the consultants is

reviewed and in cases where the performance is found lacking, the erring consultants would be warned and even debarred for a period of one year or more depending upon the severity of the non-compliance.

The Committee observe that NHAI has miserably failed in lot of areas concerning Project Supervision. The Committee recommend that overall mechanism of Supervision of projects/works should be strengthened and be given a radical reorientation to make it more effective.

Reply of the Government

It is submitted that the NHAI has formulated a policy according to which the performance of the consultants is reviewed and in cases where the performance is found lacking, the erring consultants would be warned and even debarred for a period of one year or more depending upon the severity of the non-compliance. Through NHAI Works Manual, 2006 and Standard Bidding Document, monitoring of performance as well as tasks and responsibilities to be delivered by the Consultant have been defined in detail in order to strengthen the mechanism of supervision and make it more effective. In addition to this, NHAI is also in the process of finalizing the Performance Monitoring Criteria for Supervision Consultants by evolving a system/ mechanism supported by data bank for continuous monitoring of the performance of Supervision Consultants. A Committee of the CGMs has also been constituted for taking up cases related to non-performance and shortcomings in the services to be rendered on the part of Supervision Consultants.

So far as the general observation regarding NHAI having failed in Project Supervision, it may be noted that NHAI, for the first time in the country, have implemented road projects following the internationally established norms of Project Implementation and Supervision through the FIDIC system. This FIDIC system has been well received and accepted by all stake holders in the Road Sector Programme and has led to a strong sense of confidence and transparent environment particularly with the private sector. The system provides for Project Supervision and monitoring through independent professional consultant appointed through open bidding system. Their work is also supervised through Project Director's / Technical Divisions concerned.

Remarks of Office of C&AG on the Reply of the Government

The reply of the Authority has been correct. However, the outcome of the policy of NHAI to strengthen the supervision of projects would be watched in subsequent audit.

Comments of the Ministry on the remarks of office of C&AG

Audit has desired that the progress regarding outcome of the policy of NHAI to strengthen the supervision of projects will be watched by them in subsequent Audit. Hence no comments.

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RW/H-11016/47/2006-PIC Dated 25.9.2007].

Recommendation (Sl.No.4)

Quality of Work Executed.

The Committee note that as per the Audit observations, NHAI did not ensure compliance to the quality assurance procedures by the Project Supervision Consultants. The lapses on the part of PSCs include – failure to obtain quality assurance plans from contractors; not carrying out quality control checks; incomplete documentation on quality control etc. The independent quality checks in seven stretches carried out by the Central Road Research Institute engaged by Audit revealed many works not conforming to the specifications. As per the information furnished by NHAI to the Committee, M/s Engineers India Limited were awarded the contract for conducting Quality Audits. The defects/ deficiencies/ non-conformities observed by the said audit team were rectified by the concerned contractors and the PSCs.

The Committee feel that adherence to quality assurance procedures is vital for the success of the entire NHDP. The fact that some tests on the material used for road construction failed indicates the unsuitability of the material used and deficient quality of road construction. Such projects of international repute must match the well laid down global standards in terms of quality. The situation becomes grimmer in the light of the fact that NHAI did not react to the quality audit reports endorsed to them by the Audit. To quote a glaring instance, in the case of Gorhar-Barwa Adda stretch, Audit observed that the geo-textile material valued at Rs. 5.79 crore used between sub-grade and granular sub-base was not even approved material. The Committee feel perturbed at the response of the Ministry/NHAI who had stated that the said quality check work was entrusted to IIT Delhi but due to non-availability of the testing facilities in the Institute, NHAI failed to ascertain the suitability of the material used. This issue raises a very serious doubt over the overall ability of the NHAI to ensure quality assurance of the executed work. The NHAI have tried to defend themselves by submitting that guidelines have been issued to all Project Implementation Units of NHAI covering the general deficiencies observed by Audit, for taking corrective action. Even M/s Engineers India Limited (EIL) engaged by NHAI have pointed out several deficiencies in the quality assurance procedures such as – (i) Quality Assurance

Plans prepared by contractors were being submitted in piecemeal (ii) Plans prepared by PSCs were differing from the plans prepared by the contractors (iii) the test results of materials tested in outside laboratories were being received by the contractors and not by the consultants; (iv) routine tests were not witnessed by the Supervision Consultants (v) road tests were not carried out and the work was allowed to go ahead (vi) in the case of Built Operate Transfer (BOT) projects, the concessionaire did not give due regard to the instructions issued by the independent consultants; in some cases the jobs were sub-let even without the approval, etc. This speaks volumes about the overall quality of execution of work on various undergoing phases of NHDP. The only positive thing done by NHAJ on the said observations of EIL is that they circulated these observations to all their Project Implementation Units with the request to bring them to the attention of the contractors and Supervision Consultants for discussion and taking preventive and remedial measures for assuring the desired quality *vide* NHAJ communication dated 12 July, 2003.

In the light of the above backdrop, the Committee agree with the recommendations of the Steering Group (SG) constituted by the Ministry in the year 2001 which *inter-alia* provide for; (i) requirement of external quality audit system for highway projects; (ii) preparation of a panel of pre-qualified quality auditors; (iii) instead of engaging a single institution for carrying quality audit, the system should be more broad based involving a number of institutions/individuals; (iv) the quality audit should be done at intervals of 6 months and by rotating the auditing agencies; and (v) the quality audit should also keep in view the conditions of the consultancy contract of the Project Supervision Consultants. The Committee recommend that NHAJ should follow these recommendations in letter and spirit and should not compromise on any aspect of quality of the executed works. The Committee further note that there is a proposal for creation of a Quality Assurance Cell in NHAJ with key responsibilities for promotion of quality assurance initiatives, quality checks through inspection of the ongoing works including quality audit through external professional agencies. In this regard, the Committee recommend that the said proposal needs to be expedited and implemented at the earliest. The Committee are of the view that if good quality of road construction is ensured at the initial stage itself, then it would definitely minimize the subsequent maintenance costs.

Reply of the Government

It is submitted that the recommendations for the Steering Group have been incorporated in the Request For Proposal (RFP) for appointment of Quality Auditors.

The RFP provides for:-

1. Open bidding for appointment of Quality Auditors.
2. RFP document contains stringent qualifying criteria for the prospective bidders and Auditors.

3. The documents shall form the basis for preparation of audit plan/ check list drawn from following documents:-

- Construction Supervision Manual
- Approved Quality Assurance Manual for the project.
- Approved method statement.
- Quality system/ Quality plans, inspection and test plans etc. approved by PSC.
- About Quality System Audit to be more broad based involving number of institutions/ individuals, the same may be implemented after bidding.

It is also submitted that quality assurance procedure was in existence in NHAI for implementation of NHDP Phase I. Now in pursuance of the recommendations, a separate Quality Assurance Cell has been constituted by NHAI, which has reviewed so far the existing system and finalized following.

- (a) NHAI Works Manual 2006.
- (b) Quality Assurance Manual.
- (c) Document for procurement of a panel of external professional agencies for conducting Quality Audit and surveillance of on-going NHDP works.
- (d) Invited bids for appointment of Quality Auditors.

Remarks of Office of C&AG on the Reply of the Government

Though the Authority has constituted a separate Quality Assurance Cell, it has not yet appointed external agency for quality audit of ongoing projects.

Comments of the Ministry on the remarks of office of C&AG

It is submitted that tenders for evaluation of technical and financial proposals for appointment of external agencies for quality Audit of ongoing projects, has been completed. The work is under final stage of award.

[Ministry of Shipping, Road Transport and Highways, (Deptt. Of Road Transport & Highways,) O.M No.-- RW/H-11016/47/2006-PIC Dated 25.9.2007].

Recommendation (Sl. No. 8)

System of obtaining/revalidating Bank Guarantees

According to the Audit observation, the NHAI did not have a reliable system/mechanism of verifying the credentials of the bidders and keeping the Bank Guarantees valid through periodical renewals to avoid their expiry. This

resulted in legal complications and contributed towards loss. On these accounts, the NHAI could not recover a total of Rs. 24.44 crore from two contractors.

In this regard, the Committee note that various Bank Guarantees like performance security, mobilization and equipment advance Bank Guarantees, retention money etc. are obtained from the contractors to safeguard the interest of the client i.e, NHAI. However the whole purpose is likely to be defeated if the Bank Guarantees so furnished by the contractor are not verified or periodically renewed to prevent their expiry. The lackadaisical manner in which the Bank Guarantees were handled is revealed from the fact that in the case of six projects, the Bank Guarantees furnished by the contractors were found to be forged. This raises a very serious question on the overall system of engaging high profile firms/contractors by the NHAI to carry out execution of such big projects. Submitting forged bank guarantees is definitely a criminal offence and should have been dealt with equal severity. Further, had there been a robust system of timely renewal of bank guarantees in place, the recovery could have been affected without loss of time/interest and legal complications.

The Committee, therefore, recommended that responsibility must be fixed on the concerned officers of NHAI who were responsible for verification and timely renewal of bank guarantees in view of the losses suffered by NHAI on these counts. Further, the NHAI must put into place a fool proof and robust system of handling the Bank Guarantees.

Reply of the Government

As regards fixing the responsibility it is submitted that in the reports of the COPU there are five projects in which instances of submission of forged Bank Guarantee by the Civil Contractor was detected and referred to Vigilance Division. In all the five projects the civil contractors were M/s Maharia Resurfacing & Construction Pvt. Ltd. and his other joint ventures namely M/s You One Maharia and Maharia-Raj. Two projects have since been investigated w.r.t. the records available at Hqrs and project offices and with the concurrence of CVC, Major penalty Proceedings have been initiated against the officers against whom lapses were identified. Simultaneously, FIRs have been lodged with the Police Authorities and criminal investigation is under process against the Contractor. Having regard to the complexity of the case, the CVC has assigned the case to the CBI for further investigations. As regards the other three cases, the same are being examined w.r.t the original records available with Tech. Wing at Hqrs. and respective PIUs in the field. As regards the observation that the NHAI could not recover a total of Rs. 24.44 crore from two contractors, it is submitted that in one contracts (Gurgaon-Kotputli Project) against the total recovery of Rs. 28.37 crores, NHAI has already recovered Rs. 14.23 crores by encashing the Bank Guarantee. Balance amount was proposed to be recovered from the account of contractor in other project. The matter is sub-judice at the

present. In another case (Kanpur - Lucknow Project), the contractor has already been black listed for submission of forged bank guarantee. NHAI's claim for

recovery is being pursued through arbitration. Appropriate action under the Conduct Rules will be taken against the officers involved in the projects in due course.

As regards strengthening the system of handling of Bank Guarantees, it is submitted that appropriate procedure has been laid down for verification, acceptance and renewal of Bank Guarantees. System of maintaining and confirmation of Bank Guarantees has also been laid down in the NHAI Works Manual (Para No. 4.38-4.39). To strengthen the verification system, it has also been provided that a responsible officer not below the rank of Manager should personally obtain the confirmation from the issuing branch.

Remarks of Office of C&AG on the Reply of the Government

Reply has been verified and found correct. The Authority has initiated disciplinary proceedings against the officers involved in forged bank guarantee cases in respect of all stretches except Lucknow-Kanpur section. The action to be taken by the Authority against the officers involved in Kanpur-Lucknow project would be watched in subsequent audit. Hence, the Para remains.

Comments of the Ministry on the remarks of office of C&AG

The progress of action taken by the Authority regarding fixing the responsibility on the concerned officers of NHAI who were responsible for verification of bank guarantees in Kanpur-Lucknow project would be intimated to Audit in due course.

[Ministry of Shipping, Road Transport and Highways, (Deptt. Of Road Transport & Highways,) O.M No.--
RW/H-11016/47/2006-PIC Dated 25.9.2007].

Recommendation (Sl. No. 9)

Payment of Escalation

The Audit has observed that there were ambiguities/inconsistencies in the contract clauses in respect of 15 contracts. This had led to different interpretations with regard to admissibility of price adjustment under various categories. NHAI initially withheld the price escalation claims but subsequently released payments of Rs. 77.71 crore to 15 contractors as price escalation against receipt of Bank Guarantees. Further, the said price escalation was paid with total disregard to the opinion of the Ministry of Law and Justice that no price escalation was payable as per the provisions of the agreement.

In this regard, the Committee note that the NHAI/Ministry have admitted that the contract conditions for 15 out of 28 contract packages relating to payment of escalation were worded differently leading to the inadmissible payment of escalation. As regards the releasing of such escalation amount to the contractors pending opinion of the Law Ministry, the Committee are not at all convinced with the justification of the NHAI that this step was taken in view of the representations made by the Contractors' Federation pleading that this was an unintentional discrepancy in the wording of contract conditions in these particular contracts vis-à-vis the other contracts and that the payment was made against the Bank Guarantees. The Committee feel that such a step by a professional organization like NHAI was totally against the concept of sound business principles and prudent commercial practices as it has jeopardized its own financial interests. The Committee do not find that any urgency was involved for release of payments pending decision of the Law Ministry, which have now become difficult for NHAI to recover and are being litigated in the courts. In fact, such a situation would not at all have arisen had NHAI adopted uniform and unambiguous contract provisions for all the contracts. While observing that NHAI has recovered Rs. 11.73 crore of this escalation payment, the Committee strongly recommend that NHAI may make all possible efforts to recover the balance amount of Rs. 65.98 crore. It may also ensure standardization and uniformity in contract provisions so as to prevent recurrence of such lapses in the future

Reply of the Government

As regards standardization and uniformity of contract provisions, it is submitted that the NHAI has now adopted a standard bidding document in which contract provisions for payment of price escalation have been standardized and made uniform. This Standard Bidding Document has been adopted for subsequent phases of NHDP.

Regarding, recovery of the amount of Rs.65.98 crores paid to the 15 contractors, NHAI is putting its best efforts in doing so. However, the matter pertaining to price escalation payment/ recovery has been referred to DRB, Arbitration and in some cases, court has also been approached either by NHAI or by contractor to safeguard respective interest.

Remarks of Office of C&AG on the Reply of the Government

The reply has been verified and found correct. The recovery of Rs. 65.98 crore would be watched in subsequent audit.

Comments of the Ministry on the remarks of office of C&AG

The Action Taken Report has been verified by Audit and found correct. Hence no comments.

[Ministry of Shipping, Road Transport and Highways, (Deptt. Of Road Transport & Highways,) O.M No.--
RW/H-11016/47/2006-PIC Dated 25.9.2007].

Recommendation (Sl. No. 10)

Toll Collection

Toll revenue is a fee levied and collected from mechanical vehicles for services or benefits rendered in relation to the use of a section of a National Highway, bridge or tunnel. The National Highways Act, 1976 authorizes the Government to levy such fee.

The Committee note that according to the Audit observation, there was a loss of toll revenue of Rs. 42.23 crore due to various reasons such as delay in issue of Gazette Notifications; late handing over of site, non-finalization of site for the toll plaza and law and order problems etc. Further, NHAI did not take timely action in foreclosure of contract with a toll-collecting agency that defaulted in its payments as per the terms of agreement resulting in non-recovery of Rs. 31.26 crore.

The NHAI while admitting that there were some procedural delays in the issuance of Gazette Notifications has sought to justify the above audit observations on the grounds that tolling is an entirely new concept in India. As such, it initially needed some time to operationalise and streamline the same. However, the system has since been streamlined and now it is ensured that required Notifications for levy of toll are published well in advance and fee collection is started as per the schedule without any loss of revenue. For this purpose, a nodal officer of the rank of General Manager has also been appointed in NHAI for following up the toll Notifications with the Department of Road Transport and Highways and also the Ministry of Law. Further, the locations of toll plazas and tollable lengths have also been finalized for the Golden Quadrilateral and those for North-South & East-West corridors are under finalization.

As regards the delayed decision to terminate the contract with a toll collecting agency resulting in non-recovery of Rs. 31.26 crore, the Committee note from the information furnished by the Ministry that this issue pertains to Kotputli – Alwar Section of NH-8 in the State of Rajasthan where the contract for toll collection was awarded to M/s Ganapati Tolls on the basis of competitive bidding. The period of contract was from 30.03.1998 to 14.03.2000. The said contractor started defaulting in making the contractual payments and also started overcharging from the users. On the matter being pursued by NHAI, the contractor resorted to several litigations to delay the punitive action against him.

As per the latest status furnished by the Ministry, the matter of toll recovery from the toll agent is presently under arbitration.

The Committee are of the view that huge investments are involved for construction and development of the National Highways. Hence, proper collection of toll revenue is of unassumed significance. The Committee has been further informed that the actual user fee collection for the financial year 2005-06 is to the tune of Rs. 798.34 crore. With the completion of the subsequent phases of NHDP, the toll revenue is likely to attain gigantic amounts. In view of this, the Committee feel that proper planning, timely action for issuance of toll Notifications, putting up of toll plazas and engagement of agencies for toll collections are of paramount importance. However, the Committee feel that by all accounts there have been prevalent irregularities in practice causing avoidable leakages. Keeping in view the fact that the system of toll collection is prone to leakages, there is a dire need for NHAI to improve its system of monitoring of tolling agencies so as to pre-empt any attempt at leakage/non-remission of the toll collections as had happened in the above mentioned case. The Committee trust that various measures taken by the NHAI to prevent toll leakages such as conducting frequent surprise checks; engagement of round the clock supervisors; 72 hours plus spot study of fee collection; study of discreet observations; computerization of toll plazas etc. would be strictly adhered to. The Committee recommend that such measures be reviewed periodically for removal of any shortcomings and a fool proof and legally sound system needs to be evolved and put into use so as to avoid ugly situations where the NHAI becomes totally helpless either to foreclose a contract or to take any punitive action against the contractor in case of his defaulting the terms of agreement. The Committee wonder whether the credibility of the contractor so appointed by NHAI in the extant case was at all ascertained by the NHAI before awarding the contract. The present case definitely points towards shortcomings on this account. The Committee also direct that all efforts must be made by the NHAI to recover its legitimate due by presenting its case professionally during the arbitration proceedings. In this regard, the Committee desire that the proposal of the Ministry for creation of a Legal and Arbitration Cell in NHAI headed by a Chief General Manager with experience in Concessions and Contract Law be implemented without any delay for the purpose of handling competently the issues related to monitoring of dispute resolution process and all legal and arbitration cases.

Coming to the question of the proposed implementation of a Modern Toll Collection System as a future solution, the Committee note from the information furnished by NHAI that the said system comprising of many advance sub-systems would have some distinct advantages in terms of preventing leakages besides being user convenient by allowing the toll collecting agency to improve customer service and satisfaction. In this direction, the Committee recommend that with the fast development of NHDP, all efforts must be made by the Government as well as NHAI to put into place the Modern Toll Collection System

at the maximum number of toll plazas in a time bound manner so as to cover the entire NHDP. For this purpose, target dates for various toll sections must be fixed and their implementation must be ensured.

Lastly, the Committee recommend that as an exercise of foresight, the NHAI must prepare a list of all the present and future tollable stretches indicating the details of expected revenue, cost of collection, arrangement for collection etc. besides bringing out clearly the variations, if any, from the Government approved toll norms and the reasons for the same etc.

Reply of the Government

NHAI is taking advance steps to ensure proper and timely commencement of user fee (toll) collection as well as for timely construction of toll plazas.

To safeguard NHAI interests in situations like M/s Ganpati Toll, provisions for sufficient advance performance securities i.e. cash equivalent to 3 months fee collection in addition to bank guarantee for a equivalent amount, have been made in the contract documents for user fee collection through private contractors(auction). To recover its legitimate dues from M/s Ganpati Tolls, NHAI is putting its best efforts as well as taking help of the leading legal experts for proper presentation during arbitration proceedings. Further, Ministry has already issued guidelines vide its circular dated 04.05.2006 that no new contracts shall be awarded to private contractors and user fee collection is to be primarily done through DGR agencies.

NHAI being well aware of the inherent problem of leakages in tolling, various measures like decoy customers, discreet observations, 72 Hr spot survey etc are being conducted from time to time to keep a close surveillance on the toll collecting agencies, besides other measures at PIU level.

To keep pace with the increased task of User Fee Collection (Toll), the system of monitoring user fee agencies is being reviewed and improved based on past experience as well as to make it legally more binding on user fee agencies. Some of the recent measures taken in this matter, are detailed below:

- To keep pace with the increasing number of fee plazas, EoI has already been called for empanelment of CA firms at State levels to carry out 72 Hr Spot Study as well as to perform the functions of Local Fee Auditor.
- The contract documents for engagement of DGR sponsored ex-servicemen agency has been reviewed clearly defining the penalties in case of defaults by fee collecting agencies. The revised draft contract document is under preparation. This is expected to be finalized shortly.
- All contractual documents are got vetted through renowned legal firms to avoid any clause not sustainable against legal grounds.

- Based on the experience gained from levy and collection of user fee, the Sub – Committee of CoS under the Chairmanship of the Secretary (Expenditure) has already finalized its recommendations on new toll policy. This is expected to take care of various issues of Public as well as Private Funded projects pertaining to user fee collection (tolling).
- To handle the issues related to monitoring of dispute resolution process and all legal and arbitral cases, a Legal and Arbitration Cell headed by a Chief General Manager with experience in Concessions and Contract Law has already been created in NHAI and is functional.

Regarding Modern Toll Collection System, NHAI on pilot basis, has already identified 10 plazas in 1st phase for implementation of Modern Toll Collection Systems. With reduced human intervention, it would certainly help in prevention of leakages in user fee collection to a great extent. On the basis of the experience of these pilot projects, this concept is thereafter proposed to be applied to other projects under NHDP in a time bound manner. The computerization which is also a part of Modern Toll Collection System has already been achieved on most of the plazas and all the plazas are being connected through WAN to NHAI HQ for real time monitoring of user fee collection at various plazas.

The Committee's recommendations regarding preparation of a list of all the present and future tollable stretches indicating the details of expected revenue, cost of collection, arrangement for collection etc. shall automatically be catered through CPIS which is presently under implementation. Besides, as apprised earlier, the overall plan of plaza locations and lengths covered under each plaza for all the 4 arms of GQ has already been finalized and Tolling Plan for NS/EW is under finalization.

Remarks of Office of C&AG on the Reply of the Government

Reply of the Authority regarding the preparation of a list of present and future tollable stretches indicating the details of expected revenue, cost of collection, arrangement for collection etc. is not verifiable at this stage because the Computerized Project Information System is still under implementation. The Authority should frame time schedule for its implementation and should adhere to it. Further, action taken by the Authority to safeguard its interests in situations like Ganapati Toll is contrary to the reply given by the Authority. Though the Authority replied that provision for performance security like cash equivalent to 3 months toll collection and bank guarantee for equivalent amount have been made in the contract documents, in the latest toll collection agreement signed in June, 2007, the Authority has stipulated performance security deposit equivalent to 2 days toll collection or Rs. 10.00 lakh whichever is high in the form of bank guarantee. Other measure to be taken by the Authority may be watched during subsequent audit.

Comments of the Ministry on the remarks of office of C&AG

Computerized information system in 10 locations identified by the Authority will be implemented upto the end of September, 2008. Thereafter the efforts will be made to implement at other toll plazas. All efforts will be made to stick to the above stated time schedule.

It has been informed earlier that in the case of user fee collection through private contractors (auction), sufficient performance securities are now taken in advance i.e. cash equivalent to 3 months fee collection in addition to bank guarantee for a equivalent amount. This shall be sufficient to avoid such type of situation to surface again as faced by NHAI in case of Ganpati Tolls. This type of bid document will be used only if the collection activities are given on auction basis to the Private Contractor. Whereas the provision of performance guarantee equivalent to two days of toll collection or Rs. 10 lakhs whichever is higher, has been made in a new formulated bid document which are being entered into only with Directorate General of Resettlement (DGR) sponsored ex-servicemen personnel. In this arrangement the DGR agency is paid service charges on monthly basis and the total actual collection goes to NHAI account on daily basis which is unlike to the arrangement with Private Contractor who pays a lump-sum amount to NHAI on monthly basis and the actual collection is retained by themself. Therefore, there is no contradiction in the two statements as it is for two different type of contract documents.

All measures taken by NHAI will be submitted in subsequent Audit.

[Ministry of Shipping, Road Transport and Highways, (Deptt. Of Road Transport & Highways,) O.M No.--
RW/H-11016/47/2006-PIC Dated 25.9.2007].

Recommendation (Sl. No. 11)

Restructuring of National Highways Authority of India

The Committee note that in 1995 when the NHAI was set up, its mandate was limited to implementation of a few Asian Development Bank assisted works and subsequently, a few more projects were entrusted to it by the Ministry of Road Transport & Highways. It was only after the sanctioning of the NHDP in 1998 that its mandate was enlarged exponentially. To cope with the increased mandate, the Committee feel that institutional strengthening of NHAI is very crucial. In this direction, the Committee note that the Committee on Infrastructure under the Chairmanship of Prime Minister considered this issue and decided that it is necessary to build NHAI's institutional capacity by making it a multi-disciplinary body having high quality expertise in financial and contract management. Accordingly, an Inter-Ministerial Committee constituted under the Chairmanship of

Secretary, Road Transport and Highways has *inter-alia* recommended that the tenure of the NHAI Chairman be fixed for at least 3 years extendable to 5 years; increase in number of part-time members in NHAI Board from the present 4 to 6; 6 full time members against 5 at present; to empower the Authority to create posts in NHAI upto the level of Chief General Manager and creation of additional posts of CGMs, etc. This Committee has also recommended establishing expert cells in NHAI in the fields of Project Appraisal, Planning, Quality Assurance, Standardization and R&D, Contract Management, Legal Arbitration and Safety. The Committee note that the above-mentioned report is presently under the approval of the Cabinet. In view of this, the Committee while appreciating the efforts made by the Government for restructuring of NHAI feel at the same time that this should have been done much earlier. There has been a definite laxity on the part of the Government for not initiating these measures during the initial stages of NHDP. The Committee, therefore, recommend that, as promised by the Ministry during their deposition before the Committee, all requisite efforts must be made to complete the whole exercise of restructuring of NHAI including some amendments required in the NHAI Act, 1988 for creation of certain additional posts, by the end of the year 2006. The Committee further recommend that the exercise of framing the Recruitment Rules, if any, required to be framed in pursuance of the amendments in the NHAI Act should also be started simultaneously so that requisite posts in NHAI could be filled up in time.

Reply of the Government

It is submitted that the Draft Cabinet Note for restructuring of NHAI is under finalization.

As regards, recommendations of inter-ministerial Committee on Infrastructure regarding creation of cells to look after specialized functions have been implemented by creation of separate cells for Road Safety, Law & Arbitration, Standardization, Planning & Quality, Contract Management and Project appraisal. Simultaneously, an exercise for framing Recruitment and other Regulations for the Authority is currently under finalization.

Remarks of Office of C&AG on the Reply of the Government

The work relating to restructuring of NHAI and framing of Recruitment and other Regulations of the Authority is not yet finalized. The Authority has, however, created all the cells as promised to COPU. The finalization of above work will be watched in Audit.

Comments of the Ministry on the remarks of office of C&AG

As desired by Audit, the position of restructuring of NHAI and framing of Recruitment and other Regulations of the Authority will be watched by them in subsequent audit. Hence no comments.

[Ministry of Shipping, Road Transport and Highways, (Deptt. Of Road Transport & Highways,) O.M No.--
RW/H-11016/47/2006-PIC Dated 25.9.2007].

Recommendation (Sl. No. 12)

Implementation of Subsequent Phases of NHDP

The Committee note that Phase-I of the NHDP suffered many shortcomings during its implementation resulting in time and cost overrun. These shortcomings occurred primarily on account of inadequate planning and non-synchronization of pre-construction activities, lack of coordination with governmental agencies, deficient Detailed Project Reports, inadequate contract management and non-standardization of contract provisions. Further, lack of effective deterrent provisions regarding performance of DPR consultants, Project Supervision Consultants and Contractors etc. led to making of overpayments and sub-standard quality of works besides resulting in delayed completion of project.

The Committee is, however, inclined to give lenient view to NHAI with regard to the above-mentioned deficiencies keeping in view the fact that the Authority was performing such a mammoth task for the first time. The lack of experience by NHAI in handling projects and programmes of this magnitude is the main reason for the deficiencies observed in planning and contract management during implementation of Phase-I of the NHDP.

In the above backdrop, the Committee observe that the subsequent phases i.e. Phase-II and Phase-III of the NHDP Project are already under implementation by the NHAI and the approval for other phases like Phase-IV to Phase-VI has already been given by the Government. The Committee feel that NHAI should learn a lesson from its past experiences and ensure that the lapses which occurred during the implementation of Phase-I do not recur in the subsequent phases of NHDP. The Committee recommend that the NHAI must evolve a system for continuously storing and using experiences gained over the passage of time in various fields such as bid process, contract management, time and cost overrun, quality of work, performance of Contractors, Design Consultants and Supervisory Consultants etc. and this must be put into use in the subsequent phases in the best possible manner. The Committee further recommend that the recommendation of the Inter-Ministerial Committee (IMC) constituted by the Ministry regarding establishment of Expert Cells in the field of Project Appraisal,

Planning, Quality Assurance, Standardization and Research & Development, Contract Management, Arbitration and Safety be implemented without any further loss of time so as to establish in-house specialist expertise in these fields.

Reply of the Government

It is submitted that NHAI had taken several steps to capture the best practices and using its experience in improving the system of the bid process, contract management etc. NHAI has already created Standardization and R&D Cell and Planning & Quality Assurance cell. The Standardization and R&D cell inter-alia is responsible for tracking the best practices; facilitating design consistency and standardization of the document of the bid process of contractors, design consultant and supervision consultants. The request for proposal, bid document for design consultant, contractors, supervision consultants, civil works manual, quality manual, model concession agreement etc. have already been standardized. Planning and Quality Cell on the other hand is responsible for promoting the quality initiatives.

The experience gained by NHAI in NHDP-Ph-I is being used for improving and strengthening the system of bid processes, quality of work, performance of contractor/design consultant/supervision consultant by incorporating suitable clauses in the contract agreement for keeping effective check on the outsourced agencies.

The monitoring system is also being strengthened to keep continuous checks on the progress of the projects and for resolving the critical issues. NHAI has also developed RIS and CPIS software which will assist in monitoring the projects effectively to avoid any time or cost overrun.

NHAI has already constituted Expert Cells in the fields of Project Appraisal, Planning, Quality Assurance, Standardization and R&D, Contract Management, Legal & Arbitration and Road Safety and putting its best possible efforts to avoid recurrence of lapses which were observed during the implementation of Phase-I, in the subsequent phases of NHDP.

Remarks of Office of C&AG on the Reply of the Government

The Authority has created all the cells as promised to COPU. However, the outcome of this action will be watched during the Audit of subsequent phases of NHDP.

Comments of the Ministry on the remarks of office of C&AG

As desired by Audit, outcome of the action taken by NHAI will be watched by them in their subsequent audit. Hence no comments.

Chapter III

RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES.

Recommendation (SI. No. 5)

Standardization of Stretches

The Audit in their report has pointed out that NHAI did not standardize the length of stretches for award of contracts to facilitate cost comparison for award and execution of work nor did it devise any more robust and effective cost control mechanism as an alternative. This resulted in variation in cost per km of contiguous stretches from 1.86 crore to Rs. 4.20 crore per km. In this regard, the Committee note that both the Ministry as well as NHAI have expressed reservations on the possibility of standardization of stretches. It has been submitted that the same is not possible because of a large number of variables like variations in number of major bridges/stretches, length of service roads, terrain and soil conditions, traffic volume, etc.

In this connection, the Committee note that according to the guidelines specified by the Public Investment Bureau (PIB) for scrutiny of individual sub-projects under NHDP by NHAI Board, it has specifically been *inter-alia* included that the proposals for the investment decisions of the sub-projects should contain the details of the costs of 4/6 laning along with the comparative cost of latest approved/awarded projects on a like to like basis. In case of substantive variations, specific justification should be given. However, no information either by the NHAI or by the Ministry has been furnished to the Committee suggesting that any attempts have been made to compare the cost on a like to like basis as indicated in the said guideline. In this regard, the Committee feel that now after a lapse of almost 6 years since launching the NHDP, enough experience and technical data is available with NHAI and the same is required to be put into use to take care of the reservations expressed by the NHAI regarding standardization of the stretches. In addition to this, the NHAI should also explore the possibility of devising alternative cost control system so that the kind of variance pointed out by the audit could be addressed.

Reply of the Government

Regarding standardization of the stretches, it is submitted that the decision regarding the length of the package is taken after carefully studying various aspects of the project corridor like geographical and topographical features, requirement of bypasses, service roads, major bridges, traffic volumes, cost etc. Packages sizes accordingly have different lengths. In view of the factors indicated above, it is not feasible to standardize the length of packages.

As regards comparing the cost of various projects (packages) on like to like basis, it is submitted that the DPR are prepared for each project following basic standards codified by IRC and MOST and the cost per km. depends on number of parameters like condition of existing road, sub soil data, facilities to be provided like service roads, flyovers, underpasses, cross drainage works like bridges, culverts, leads for natural and manufacture material required as inputs for the projects etc. The cost of the project as determined by the DPR Consultant is then indicated in the bid document and the bidders quote their price. The bid price is then compared with the DPR's estimated cost. Following the system of open and transparent bidding, competitive bids are received, processed and appropriate decision for acceptance / rejection of the bids is taken. Whenever the proposals are placed before the NHAI Board for approval of the sub projects, explanatory notes are invariably given for variation in costs per km. of the sub project.

Remarks of Office of C&AG on the Reply of the Government

In connection with the alternative cost control system, NHAI has recently invited proposal from International Consulting Firms to undertake the followings tasks:

- (i) Study of DPRs of National Highways Development Projects sub-projects with a view to find out the possible variation and inconsistencies in the project preparation with regard to prescribed guidelines and design standards and to examine the cost estimation methods adopted and unit rates for various items of works considering the leads and basic rates of materials etc.
- (ii) Study of the work executed in respect of the DPR selected under Task (i) above to analyse the possible reasons for the variation in the provisions of DPRs and actual execution of work.
- (iii) Review of specifications and design standards.
- (iv) Review of analysis of rate and standardization of Bill of Quantities (BOQ). Review of construction technology. The detailed cope of work under the above assignment has been elaborated in Terms of Reference International Consulting firm for providing consultancy services for reviewing costs of construction of projects

As the Authority has established alternative cost control system, Audit has no further comments.

Comments of the Ministry on the remarks of office of C&AG

The ATR have been vetted by the Audit without any further comments.

Recommendation (Sl. No. 6)

Preparation of Contract Documents

The Committee note that NHA did not prepare the contract documents with due care and there were inconsistencies in various clauses in respect of Conditions of Particular Application (CoPA), price escalation clause, recovery clause for Mobilization Advance and Standardization of Bills of Quantities (BoQ) in respect of Bituminous Course. Regarding the Bills of Quantities, the Audit has pointed out that an extra cost of Rs. 260.98 crore was incurred with reference to the lowest quantities of bituminous work in the 23 stretches for which the analysis was made. In these stretches, the quantities per km of Bituminous Course varied widely from 4% to 1280%. The Committee note that as remedial measures, the Conditions of Particular Application in respect of price variation clause and recovery clause for Mobilization Advance in the bid documents have since been standardized *vide* NHA circular dated 27 August, 2004. The Committee note with satisfaction that the same has been verified and found correct in the follow-up audit conducted by the C&AG.

As regards standardization of Bills of Quantities, the NHA has stated that it is not feasible to standardize the per km quantity of bituminous work as bituminous pavement thickness depends on various parameters such as traffic density, type of terrain, soil, climate conditions etc. The Committee are not satisfied with this sort of response from NHA. Though it may be correct that the thickness of bituminous layer may depend on the above parameters, but these parameters do not undergo abrupt changes for similar type of stretches. Further, laying of bituminous course commences only after the completion of the sub-base and base courses, which ensure evenness of the surface. As informed by Audit, the maximum thickness of the Bituminous Course should be 40 mm only (up to 100 msa-million standard axles). In view of this, the Committee recommend that NHA must explore the possibility of standardization of Bituminous Course to the best possible extent in view of data collected so far in this regard. Further, collective views of the DPR consultants along with the in-house expertise available with NHA may also be put into use to achieve this objective besides making its whole set of operations more transparent and accountable.

Reply of the Government

In connection with the recommendations of the Committee regarding exploring the possibility of standardization of bituminous course, it is submitted that the National Highways Development Project undertaken by NHA is to increase the capacity of the existing National Highways by increasing the number of lanes, generally from two lanes to four lanes & six lanes. This program accordingly involves:-

- (i) Strengthening the existing pavement
- (ii) Constructing new pavement

- (iii) Improving geometrics of the road
- (iv) Re-aligning the existing roads.

Bituminous layers, provided in the road structure consists of structural layers, profile correction & wearing course. The thickness of structural bituminous layer to be provided depends upon existing thickness of the pavement, traffic density, type of terrain, properties of foundation (soil), climatic conditions etc. The thickness of profile corrections depends upon from the existing & the modified layout & cross section of the road. Thickness of wearing course generally remains the same. All the factors mentioned above collectively decide the total thickness of bituminous layer to be provided. In view of the variety of factors mentioned above it is not feasible to evolve a standard thickness of bituminous layer to be provided. However, detailed designs are carried out as per the IRC standards, MOST specifications & good engineering practices. NHA follows these guidelines while designing the flexible bituminous pavements.

Remarks of Office of C&AG on the Reply of the Government

The Committee gave this recommendation after examining the reply given by the Authority on the audit observation. Despite this, the Authority, without taking any action to comply with the recommendation, is giving the same reply as it gave earlier. Hence, the Para stands.

Comments of the Ministry on the remarks of office of C&AG

The Audit pointed out that the quantities per km of bituminous works varied widely from 4% to 1,280% with reference to the lowest quantities in one out of 23 stretches as per the analysis detailed below:-

S.No	Bituminous work	Qty. Per km.	Lowest quantity in the Project
1	Prime Coat (Technical Specification Clause – 502)	4,800 sqm	Delhi Border – Samalkha (NS-2 Package)
2	Tack Coat (Technical Specification Clause – 503) (a) on granular surface (b) on bituminous surface	3,028 sqm 3,829 sqm	Vijayawada – Eluru Lucknow – Kanpur (EW-2)
3	Profile Correction with Dense Bituminous Macadam (Technical Specification Clause – 507)	100 cum	Agra – Dholpur (NS-5 Package)
4	Dense Bituminous Macadam (Technical Specification Clause – 507)	1,329 cum	Vijayawada – Eluru
5	Bituminous Concrete (Technical Specification Clause – 509)	484.6 cum	Palanpur – Dessa (EW –XI Package)

2. The following variables are involved in above bituminous layers, which vary from Project to Project :

i) Prime Coat: Prime Coat is laid on granular surface, i.e., this layer requirement comes in case of new 2-lane/ 4-lane or reconstruction of existing

pavement. This layer is not required in case PCC (Bituminous) is laid over the existing road before strengthening layers. In the projects, the length of new construction and strengthening of existing road vary. Hence, this quantity per km can not be same in various projects. Further as per Technical Specification Clause – 502, the quantity of prime coat varies from 6 to 15 kgs per 10 sqm depending upon the porosity of the surface.

ii) Tack Coat: Tack Coat is applied over the Prime Coat or Bituminous Surfaces before applying further layers. As per Technical Specification Clause – 503, the quantity varies from 2 kg to 3 kg per 10 sqm. Further where the material to receive an overlay is a freshly laid bituminous layer that has not been subjected to traffic, or contaminated by dust, a tack coat is not mandatory where the overlay is completed within two days.

iii) Profile Correction Course (PCC) with DBM: This is used in case of strengthening of existing pavement (without scarification/ reconstruction). The thickness of PCC depends upon the cross profile/ levels of the existing road and designed levels of PCC top. Hence this quantity can not be same per km.

iv) BC: As per IRC-37-2001, guidelines for design of flexible pavements, thickness of BC for traffic upto 50 MSA is 40 MM and it is 50 MM for 150 MSA. Further, this quantity varies from Project to Project depending upon the length of structures/ bridges involved as wearing course over the structures/ bridges is measured separately under bridges item.

3. The pavement composition (thickness of various layers) varies from Project to Project depending upon sub-grade CBR and traffic (MSA). In IRC-37-2001, (guidelines for design of flexible pavements), the thicknesses of various layers for new constructions are already recommended (copy of Code is placed at Annexure I)

4. In view of above, it may kindly be considered that standardization of per km quantities of bituminous layers is not possible technically.

Chapter IV

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE.

Recommendation (Sl. No. 7)

Overpayments made to the contractors on account of excise and customs duty exemptions.

The Audit in their report has observed that while calling bids for stretches funded by the World Bank, NHAI failed to include a clause in the Notice Inviting Tenders (NIT) that the bidders should quote the prices excluding customs/excise duties, as exemptions were available to them. Also, the provisions for payment of price escalation incorporated in the agreements did not provide for exclusion of excise duty element from the basic price of raw material agreed to. According to Audit, the omission has resulted in NHAI not getting the benefit of duty element and resultant lower cost. Further, NHAI issued exemption certificates to five contractors, after finalizing the contract for availing the duty exemption but could not recover the proportionate duty element from the bills of contractors in the absence of necessary stipulation. This resulted in undue benefit of Rs. 30.69 crore to these five contractors.

The NHAI/Ministry have sought to justify their position by submitting that such exemptions were already in existence before the contracts were awarded to the contractors. It would, therefore, not be legal for NHAI to recover the benefit availed by contractors in view of the exemption Notifications of the Government of India since NHAI's action would restrict the benefit given by the Sovereign.

The Audit has, however, countered the above contention on the ground that the Government of India vide their Notification No. 108/95-C.E. dated 28.8.1995 issued in exercise of powers conferred by Section 5A (1) of the Central Excise and Salt Act, 1944 read with Section 3(3) of the Additional Duties of Excise (Good of Special Importance) Act, 1957, exempted from payment of excise duty all goods that are supplied to the projects financed by United Nations or International Organizations and approved by the Government of India. As such, the duty exemption is available to the projects and not to the contractors. Audit was not provided any documentary evidence that the excise/customs duty elements were duly factored in at the time of award of contract. In the absence of any clear stipulation in this regard in the contract, what could happen is that the contractors would receive full payments inclusive of the duty element and they would receive the refund from revenue authorities and not pass on the same to NHAI. In this way the contractors would gain and NHAI would lose. Normally, the provision relating to duty exemptions should be a routine provision incorporated in the Notice Inviting Tenders and then the contractors are expected

to pay back to the client (NHAI, in this case) the duty refund received by them from the revenue authorities. NHAI should have exercised due professional care in ensuring and documenting this aspect before releasing the Duty Exemption Certificate.

Taking into consideration the above-mentioned positions taken by the Ministry/NHAI vis-à-vis the C&AG's contention, the Committee feel that the whole issue needs to be looked into.

Reply of the Government

As directed by the Committee, the whole issue has been reviewed and it is submitted that in respect of the Externally Aided Projects (EAPs) [like World Bank, Asian Development Bank etc], exemption from payment of excise duty and custom duty were admissible under notification no. 108/95-CE dt. 28.5.1995 and Notification No. 84/97-Custom, dated 11.11.1997, respectively as amended from time to time i.e. well before the bids for NHDP Phase I were invited by NHAI. In clause 73.2 of the Condition of Particular Application (COPA) it was stipulated that "the prices bid by the contractor shall include all customs duties, import duties, business taxes, and income and other taxes local/State Government Octroi, royalty etc. that may be levied in accordance with the laws and regulations being in force on the date 28 days prior to the latest date for submission of bid". Further in COPA clause 73.4, the contractors were requested to verify from the Ministry of Finance (Department of Revenue) of the latest position of exemptions available. Thus, it may be submitted that the excise/custom duty exemptions being in existence much before the contracts were awarded to the contractors can not be presumed to not having been factored in the bids. In view of this it can not be said that the action of NHAI resulted into undue benefits to the contractors. As regards the observation that the duty exemption is available to the projects and not to the contractors, it is submitted that such exemptions were given by Govt. of India in case of the projects of International Lending Agencies to bring a level playing field amongst the Contractors from Member Countries of such International Lending Agencies and Indian Contractors.

Standard bidding documents adopted by NHAI in August, 2004 also stipulates in Instructions to Bidders , under clause 14.3 that "all duties, taxes and other levies payable by the Contractor under the contract, or for any other cause as of the date 28 days prior to the deadline for submission of the bids, shall be included in the rates and prices and the total bid price submitted by the bidder and the evaluation and comparison of bids by the Employer shall be made accordingly".

However, for the sake of further clarity, NHAI has initiated action to incorporate the following sub-clause under Clause 14.3.1 of Standard Bidding Documents, "Bidders may ascertain the excise and custom duty exemption available for this

project as per the relevant policy of the Government of India prevailing 28 days before submission of bid.”

Remarks of Office of C&AG on the Reply of the Government

While inviting bids, the Authority should clearly indicate the various customs /excise duty exemptions available for the project and direct the bidders to quote accordingly. Instead of taking action on these lines, the Authority proposes to include clause 14.3.1 which is vague as it does not specifically mention whether excise duty and custom duty exemption were available or not for bids. As the reply of the Authority does not comply with the recommendation, the Para may stand.

Comments of the Ministry on the remarks of office of C&AG

It has already been submitted that to inform the bidders about the exemption available, following will be incorporated in Para 14.3. of Instruction to bidders:-

“Bidders may ascertain the excise and custom duty exemption available for this project as per the relevant policy of the Government of India prevailing 28 days before submission of bid.”

Basic idea of the clause is that the bidders should take into account while bidding, the exemptions available for custom and excise duty as per the relevant Act. The laws keeps on changing, thus any detailed standard disclosure may not be possible as in the event of any unfavourable changes about the custom/ excise duty, the contractor may claim against NHAI to compensate for any unfavourable changes.

[Ministry of Shipping, Road Transport and Highways, (Deptt. Of Road Transport & Highways,) O.M No.--
RW/H-11016/47/2006-PIC Dated 25.9.2007].

Comments of the Committee

Please see paragraph No. 14 of Chapter I of the Report.

**New Delhi:
24 April, 2008
04 Vaisakha 1930 (S)**

**Rupchand Pal
Chairman,
Committee on Public Undertakings.**

MINUTES OF THE 22nd SITTING OF THE COMMITTEE ON PUBLIC UNDERTAKINGS HELD ON 24th APRIL, 2008

The Committee sat from 1630 hours to 1730 hours.

PRESENT

Chairman

Shri Rupchand Pal

Members, Lok Sabha

- 2 Shri Ramdas Bandu Athawale
- 3 Smt. Sangeeta Kumari Singh Deo
- 4 Shri Francis K. George
- 5 Shri Kashiram Rana
- 6 Shri Ram Kripal Yadav

Members, Rajya Sabha

- 7 Shri Mahendra Mohan

Secretariat

- 1 Shri S.K. Sharma Additional Secretary
- 2 Shri J.P. Sharma Joint Secretary
- 3 Smt. Anita Jain Director
- 4 Shri N. S. Hooda Deputy Secretary
- 5 Shri Ajay Kumar Deputy Secretary-II

Office of the Comptroller & Auditor General of India

Shri J.N. Gupta

Director General of Audit

2. xxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxxxx
xxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxxxx

3. Thereafter, the Committee considered the two other draft reports on the following subjects and adopted the same without modifications:

(i) Action Taken Report on Fourteenth Report (14th Lok Sabha) of the Committee on Public Undertakings (2006-07) on National Highways Authority of India – National Highways Development Project (NHDP), Phase-I.

(ii) xxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxxxxxx
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4. The Committee authorized the Chairman to finalize the Report for presentation.

5. xxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx
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6. The Committee then adjourned.

Appendix II

(Vide para 3 of the Introduction)

Analysis of the Action Taken by Government on the recommendations contained in the Fourteenth Report (Fourteenth Lok Sabha) of the Committee on Public Undertakings (2006-2007) on National Highways Authority of India – National Highways Development Project (NHDP), Phase-I.

I	Total Number of recommendations	12
II	Recommendations that have been accepted by the Government. (vide recommendations at Sl. Nos. 1,2,3,4,8,9,10,11 and 12.)	
	Percentage of total	75%
III	Recommendations which the Committee do not desire to pursue in view of the Government's replies. (vide recommendations at Sl. Nos.5 and 6)	
	Percentage of total	16.67%
IV	Recommendations in respect of which replies of the Government have not been accepted by the Committee. (vide recommendations at Sl. No.7)	
	Percentage of total	8.33%
V	Recommendations/Observations in respect of which final replies of the Government are still awaited :	NIL