

MINUTES OF 1st BOARD OF CHIEF ENGINEERS MEETING FOR THE YEAR 2019 HELD ON 23.03.2019 @ 4.00PM IN THE BOCE CONFERENCE HALL OF ENGINEER-IN-CHIEF (AW), I & CAD DEPARTMENT, ERRUM MANZIL, HYDERABAD.

At the outset the Engineer-in-Chief (AW), Chairman, Board of Chief Engineers has welcomed all the participants and placed the following agenda for discussions by the members of the Board of Chief Engineers. The names of the officers attended the meeting is appended vide Annexure-I. The Engineer-in-Chief (AW) has initiated the discussions.

Based on the request of Builders Association of India (BAI), the representatives of BAI were allowed to submit their plea before the Board of Chief Engineers on issues related to implementation of GST for the ongoing works i.e., exemption of embedded taxes in hire charges of machinery and common materials like Bricks, Fine & Coarse aggregate

Agenda item No – 1:

I & CAD Department – **Exemption of on hand works pending for want of statutory clearances** such as Forest clearance, Wild life clearance, Environmental clearance and also Road permissions, Railway permissions, N.H Clearances **while calculating ‘B’ value in arriving Bid capacity of Bidders in Tenders Evaluation** – Placed before the Board of Chief Engineers - For discussion and necessary recommendations - Regarding

**Proposed by Engineer-in-Chief (AW), I&CAD Dept
and Commissioner, COT, Hyd**

Certain instances have come up, wherein the bidders have represented that some of their works are getting delayed because of delay in clearance of forest land and LA of private land and other statutory Government clearances due to which such works are delayed abnormally. This is affecting their Bid capacity criteria which is one of the main eligibility criteria for tender qualification & requested to exempt all pending projects (where the delay is not on account of contractor) in calculating

eligibility criteria like Bid capacity (B Value) to enable all the contractors to get the required Bid Capacity.

Further, Government vide Memo .No.28647/Reforms-A1/2011, dt:21.12.2011, have requested to examine the proposal by placing in the BOCE and furnish the minutes with specific remarks to Government for taking further necessary action.

In this regard, the Senior Technical officer,(Andhra Region),A.P Secretariat, Hyderabad vide Lr dt 04-07-2012 has requested the Commissioner, COT to examine the representation of M/s SEW Infrastructure Ltd., Hyderabad pertaining to the exemption of some of the on hand works for the reasons quoted by the agency.

The Commissionerate of Tenders (COT) in its meeting held on 11-07-2012 has opined that it is not advisable to exempt some of the on hand works for the reasons furnished by M/s SEW Infrastructure Ltd., Hyderabad as this will become precedence for other agencies to approach the Government or to the Court for such exemptions.

Further, as long as the agreements are in force, all those works shall be considered as on hand works while calculating Bid Capacity of the bidder till the agreement (i.e. balance works concerned) are closed by the Competent Authority.

In this connection, the agenda of Exemption in Bid capacity of EPC, Major Irrigation works to participate in tenders was discussed by the Board of Chief Engineers during its 3rd meeting for the year 2012 held on dt 23.08.2012.

“ The Board of Chief Engineers has discussed the issue and opined to recommend the Government that it is not advisable to exempt some of the on hand works as this will become precedence for other agencies to approach the Government. or to the Court for such exemptions. As long as the agreement is in force, all those works shall be considered as on hand works while calculating Bid Capacity of the bidder till the agreement (i.e. balance works concerned) are closed by the Competent Authority. However a procedure has to be evolved for solving the issue in case of the agencies who are having a large number of non-started or standstill works which are not due to the account of the agencies.”

The subject issue was once again placed for discussion before COT Committee meeting held on 01.12.2018 and the members have opine to refer the matter to BOCEs for its detailed discussion and necessary recommendations in the matter.

The Board of Chief Engineers has deliberated the issue in detail and opined that on hand works pending due to delay in Forest clearance, Environmental clearance and Interstate issues may be considered for exemption in calculating 'B' Value for arriving Bid Capacity of Bidders based on the specific reports by the concerned ENC/CE with detailed reasons thereof. In this regard, the Government is to be addressed for issue of necessary GO in the matter.

**Action: Engineer-in-Chief (AW), I&CAD Dept
and Commissioner, COT, Hyd**

Agenda Item No 2 :

GHMC – Implementation of GST for ongoing Building Works Contract – Implementation of GST for payment of bills in respect of 2BHK Housing Projects executed on or after 01.07.2017 – Payment issues – Committee constituted by the Govt to examine the issues- Report submitted - Request of BAI to allow 5% as Embedded Tax component as final settlement for the ongoing Works Contracts of Building works - Placed before the Board of Chief Engineers - For discussion and necessary recommendations– Regarding

Proposed by Chief Engineer(H&A) GHMC, Hyd

The Government in Memo No: 33/WP/A2/2017, dt: 08-08-2017 of Finance (WP) Dept have issued certain instructions for implementation of GST for payment of bills in respect of ongoing works executed on or after 01-07-2017 duly allowing 5% GST of the value of the work as interim arrangement subject to GSTDS as and when applicable and subject to final adjustment as per actual GST liability and ITC.

The Government vide Memo No: 33/WP/A2/2017, dt: 10-08-2017 of Finance (WP) Dept has constituted a committee for specific recommendations regarding implementation of GST provisions with respect to work contracts which are (a) Executed before 30-06-2017, (b) Ongoing after 01-07-2017 & (c) New works which would be let out. The Government further directed that the committee shall make their recommendations based on the Board of Chief Engineers report and also feedback obtained from other states.

As the matter stood thus, subsequently the Government vide G.O. Ms. No. 67 of I & CAD (Reforms) Department, Dt: 04-07-2018 have issued certain guidelines on implementation of Goods & Service Tax for regulating work bills for all Engineering departments in the state. As per the guidelines issued for the ongoing contracts for which the estimates were prepared with SoR prior to 2017-18 (in which Taxes are included) the net GST payable to the contractors shall be @ 5% or 12% or 18% whichever is applicable on amount of work bill after deducting embedded taxes.

The Government further directed that, the Board of Chief Engineers (BoCEs) shall quantify the embedded taxes in various types/component of works, within a fortnight of issue of the above order, so as to have uniformity across the state. The Government in the above G.O. further stated that, the 5% additional amount paid towards GST for the intervening period based on the instructions issued by the Government vide Memo No. 33/WP/A2/2017, Dt: 08-08-2017 has to be taken in to account while adjusting GST payable.

Accordingly, the BoCE has worked out the embedded taxes and published on the irrigation department website. Aggrieved by the procedure adopted for calculating embedded taxes, the BAI has approached the Chief Secretary to government with a request to intervene in the matter and to instruct the concerned to consider the exemptions, which were allowed under VAT regime, while calculating the embedded taxes for all the ongoing works.

A meeting was conducted by the Chief Secretary to Government with Builders Association of India (BAI) Telangana State and other concerned Government officials on 06-10-2018 and as per the decision taken during the meeting the Government vide G.O. Rt. No. 620 of T, R&B (R-I) Department, dt: 08-11-2018 has issued orders constituting a committee to examine the issues regarding GST with the following terms of reference.

- a. The Committee shall discuss with the concerned departments and various agencies executing the works and list out the issues post implementation of GST from 1st July-2017 with reference to the works commenced under VAT and spill over under GST.
- b. These issues are to be examined in detail with reference to the provisions of the relevant Acts like Value Added Tax -2005 Act, Central Sales Tax - 1956, Goods and Services Tax -2017, Central Excise Act -1994, Finance Act -1994 on Service Tax and suggest ways to address the same.
- c. Any other issues and legal aspects related to the above.

In compliance to the above orders issued by the Government several meetings were held by the GST committee on 15-11-2018, 19-11-2018, 24-11-2018, 29-11-2018, 01-12-2018, 29-01-2019, 31-01-2019 at Commissioner of States Taxes office, Nampally, Hyderabad. In the meetings the BAI has represented to consider the exemptions allowed under VAT regime.

The Builders Association of India, Telangana State vide their representation dated 09.02.2019 has informed that as per the existing rule positions under VAT era (under composition Scheme) the contractors are eligible to purchase materials under CST (Interstate purchases) and from TOT/unregistered dealers. And also they have stated that since no input tax credit is allowable on machinery in composition scheme under VAT era, there should not be any deduction towards the same while calculating embedded taxes in the present GST era.

The BAI have further informed that their association members together with engineering department officials have made calculations duly considering the above provisions under VAT act to ascertain embedded taxes in the 2BHK housing project work construction of 4428 2BHK houses at Ahmedguda of Medchal Constituency taken up by GHMC, and the embedded taxes have been arrived at 3.95 % of value of work. Therefore the BAI has requested that they are ready to accept reimbursement of

GST @ 5% to avoid further exact amount of Hypothetical values and to save valuable Government time and Engineering hours.

In this regard the CE(H&A)/GHMC has submitted that the 2BHK housing projects were sanctioned/tendered based on SSR 2016-17 (rates including taxes) with 5% provision towards VAT on value of work with the all applicable provisions and exemptions available under VAT regime. Therefore accordingly the agencies have quoted their tenders duly taking into considerations all provisions and existing rules under VAT regime.

The embedded taxes are worked out for the above project of 2BHK scheme in considering the allowable provisions of composition scheme under VAT act like Inter State purchase of materials (CST), purchase of materials from unregistered/TOT dealers and no input tax credit allowable on machinery in composition scheme under VAT era etc., is found to be 3.95 % on value of work subject to legally eligible of claims made by BAI. On the other hand the embedded tax component adopting BOCE communicated rates is working out to be 8.61 %.

Therefore changes in the tax structure subsequently should neither provide any undue advantage to the contractors nor punish them. Calculation of embedded taxes without considering the provisions available at the time of sanction/tenders which are working to 8.61% will result in recovery of 1.61% from contractors work bills and therefore will affect the financial position and may lead to contractual litigations, legal complications and stoppage of works.

On the other hand, considering the existing provisions under VAT regime, the embedded taxes are working out to be 3.95% and therefore result in additional financial burden of 3.05% on the Government due to release of GST @ 8.05% to the agencies.

However considering VAT provision of only 5% available as per Administrative sanction/ Sanctioned estimates, the request of the BAI to allow 5%

GST as final settlement for the works contracts of Building works, may be considered for ongoing housing works of GHMC taken up with SSR prior to 2017-18 (i.e., rates including taxes). The above proposals have been also submitted to Commissioner of State Taxes for finalization of GST for the works contracts of Building works.

In this regard, the CE(H&A)/GHMC has requested the Chairman, BOCEs to include the above item in the agenda to be placed before the members of BoCE for discussion and taking a decision on the above for finalization of GST for works contracts of Building works.

The above issue is placed before the Board of Chief Engineers meeting for its discussion and necessary recommendation in the matter.

The Board of Chief Engineers has discussed the issue in detail and opined that allowing of 5% or any other fixed percentage as Embedded Tax component as final settlement for the ongoing Works Contracts of Building works is adhoc and not justifiable as the same will vary from work to work depending on nature & item of works in the Contract and advised to work out the same as per embedded tax rates finalized by the concerned Depts., accordingly. This will be one time exercise for each Agreement by the sanctioning authority and works can be carried out and finalized accordingly. Otherwise there would be possibility of Audit objections for the same as causing financial loss to Government and undue benefit to the agencies.

Action: Chief Engineer (H&A) GHMC, Hyd

Agenda Item No 3 :

R&B Dept., – **Implementation of GST–Request for not to deduct embedded taxes from the Hire charges /Depreciation of machinery** - Representation of BAI Telangana dated 28.02.2019 – Forwarded by the Engineer-in-Chief (SR & CRN), R&B Dept., for placing before the Board of Chief Engineers - For its discussion and necessary recommendations - Regarding

Proposed by Engineer-in-Chief (SR & CRN), R & B Dept.

The Engineer-in-Chief (SR & CRN), R&B Dept., vide letter dated 18.03.2019 has furnished the following as submitted by the BAI, Telangana vide their letter dated 28.02.2019 in the subject matter.

- 1) No input is allowed for the machinery in the VAT era in Composition Scheme. The element of "Hire Charges of the machinery" was arrived at by dividing the Capital Cost of the Machinery by the life-time working period of the machinery and adding the salaries/wages of the crew and cost of Diesel. Hence, it is clear that though the words "hire charges of the machinery" are used in the SoRs, in fact, "depreciation of the machinery" is taken into account for the calculation, and the "hire charges" are nowhere taken into consideration. The correct position is that there would be no embedded taxes in the value or depreciation of the machinery OWNED by the contractor, and hence there should not be any deduction on account of embedded taxes.
- 2) No changes have been made either in the ruling position pertaining to taxes like VAT or in the procedure of preparation of SoRs existing in the combined state of AP after bifurcation of the State. After introduction of GST w.e.f. 01-7-2017, the issue of deduction towards embedded taxes in the machinery is being examined alike in both the States. The Government of AP have issued orders vide GO Ms No.118, Dt:09.11.2018 to keep the same hire charges of machinery adopted in the pre-GST regime even in the GST regime from 01-7-2017, for all the ongoing works as on 01-7-2017 (for which agreements have been concluded before 01-7-2017) Suitable instructions have also been issued by the Government of A.P. vide letter No Rev SoRs/ ENC(R&B)/DCE®/ EE(TEC) / DEE7 /AEE2 /2019, Dt:21.02.2019 to adopt the SoRs and revised estimates as per the GO Ms No.118 Dt:09.11.2018 and the datas with zero lead has been communicated.
- 3) Further, the BAI has requested to take similar action and issue necessary orders as those of Government of AP so that no deduction towards embedded taxes is made from the hire charges of the machinery, as the element of hire charges is actually depreciation in the value of the machinery and as the machinery items are owned by the contractors.

- 4) In this regard, the Engineer-in-Chief (SR & CRN), R&B Dept has requested to put forth the above subject matter before Committee of Board of Chief Engineers for its discussion and necessary recommendations.

In view of the above, the subject issue along with copies of Engineer-in-Chief (SR & CRN) letter dated 20.03.2019 and BAI Telangana letter dated 28.02.2019 is placed before Board of Chief Engineers (BOCEs) for its discussion and necessary recommendations in the matter.

While submitting their plea on this issue before BOCEs, the BAI has also requested Board of Chief Engineers to examine the embedded taxes of common materials like Fine & Coarse aggregate and Bricks.

The Board of Chief Engineers has deliberated the issue in detail and after comprehensive discussions in the matter, the BOCEs has recommended to keep the same hire charges of machinery as adopted in pre-GST regime in the post-GST regime also for all the ongoing works as on 01.07.2017. In this regard, BOCEs observed that by keeping the same machinery hire charges in post-GST regime, the machinery lead/conveyance charges will not be affected and hence recommended to keep the same machinery lead/conveyance charges in post-GST regime for all the ongoing works as on 01.07.2017.

Further, BOCEs also examined the embedded tax rates of common materials like Fine & Coarse aggregate and Bricks etc., in pre-GST regime and after detailed deliberations BOCEs has recommended for exemption of bricks (except factory made aerated bricks like Aerocon etc.,) and Coarse aggregate (crusher by product) from the purview of embedded taxes and to retain the same rates in post-GST regime as that of pre-GST regime for all the ongoing works as on 01.07.2017. This is because most of the dealers/suppliers come under exempted category.

Action: Engineer-in-Chief (SR & CRN), R & B Dept

Agenda item No. 4

I& CAD Dept - SC/ST Contractors Development Policy- Public works- Concessions to SC / ST Contractors - Implementation of the GO

Ms.No.59 - Concessions/Relaxations in respect of reservation of works to SC / ST contractors in public works - **Detail Methodology for implementation - Requested by CE/Civil, TSTRANSCO** - Placed before the Board of Chief Engineers - For discussion and necessary recommendations-
Regarding

Proposed by Chief Engineer/Civil, TS TRANSCO

The Chief Engineer/Civil, TS TRANSCO vide their letter dated 15.12.2018 has requested for Methodology on Implementation GO Ms No 59, I&CAD(Reforms) Dept., dated 21.05.2018 i.e., entrustment of works to SC/ST/Waddera(Sagara) communities as per the earmarked reservation in the said GO.

In GO Ms No 59, I&CAD(Reforms) Dept., dated 21.05.2018, the following is stipulated regarding reservation of works costing (ECV) up to Rs 1.00 crore as below.

- i) 15% to SCs
- ii) 6% to STs
- iii) 3% to Waddera/Sagara Communities.

The presenting officer on this agenda i.e., Chief Engineer/Civil, TS TRANSCO was absent in the meeting. However, members have discussed the issue and opined that the matter may be examined after obtaining feedback from Division/Circle level on current implementation of GO Ms 59. In this regard, the HODs of all Engineering Depts are requested to obtain feedback from the concerned and furnish the same to BOCEs for its examination and discussion in subsequent BOCEs meeting. Mean while all efforts should be made by all tender inviting authorities to implement the orders of GO Ms No 59 in a fair and transparent manner.

Agenda item No. 5

I&CAD Department –Settlement of Disputes by way of Arbitration in Government Contracts with Claim amount up to Rs.40,00,000/- by the International Centre for Alternative Disputes Resolution(ICADR), Hyderabad in

Telangana State- Certain Instruction issued by Govt to place the matter before the Board of Chief Engineers Meeting - Regarding

Proposed by Engineer-in-Chief (AW), I&CAD Dept

The International Centre for Alternative Dispute Resolution (ICADR) stated that their organization is autonomous working under the aegis of the Supreme Court of India with its Regional Centre at Hyderabad and fully funded and supported by the Government of Telangana.

As per the request of the ICADR, the Government of Telangana have issued the G.O.Rt.No. 597 Law (B) Department dated 31-10-2018 (copy enclosed) by raising the ceiling of claim amount to Rs.10,00,000 to Rs.40,00,000/- for the purpose of the arbitration disputes arising in the Government contracts and with a direction to get the disputes arbitrated through the ICADR, Regional Centre, Hyderabad.

According to ICADR, the above direction by the Government will help to settle disputes of all kinds arising out of Government contracts expeditiously, economically and without the hassles involved in traditional court litigation within one-year period as per the Arbitration and Conciliation (Amendment) Act, 2015.

In this regard, this office has requested the Government to issue necessary orders for implementation of G.O.Rt.No. 597 Law (B) Department dated 31-10-2018 of Govt. of Telangana by all unit officers of I & CAD Department at their level to settle disputes arbitrated through the ICADR, Regional Centre, Hyderabad.

In view of above, the Government has informed that at present in almost all agreements in I&CAD Department, there is no provision for arbitration beyond Rs.50,000/-. As per the existing instructions, the concerned CE or SE they can arbitrate up to Rs.50,000/- claims only.

Further, the Government has informed that the Law Department has suggested to incorporate alternative dispute resolutions and they have issued G.O.Rt.No. 597 Law (B) Department dated 31-10-2018 duly enhancing the limitation to

Rs.40,00,000/- and such cases may be referred to ICADR , Hyderabad. This may perhaps require amendment to the existing agreements.

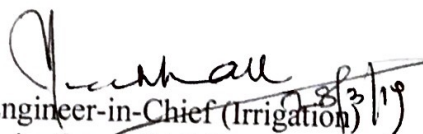
Now, the Government has requested the Engineer-in-Chief (AW), I&CAD Dept to examine the matter in the Board of Chief Engineers and recommendations may be communicated to Government for issuing necessary instructions to all the Engineering Departments.

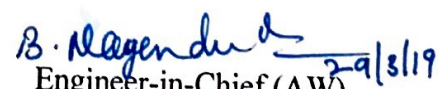
In view of above, the subject issue along with copies of Govt.Memo.No.10321/ARD/2018 dt:08.03.2018 and G.O.Rt.No. 597 Law (B) Department dated 31-10-2018 are placed before BOCEs for its discussion and necessary recommendation in the matter.

The Board of Chief Engineers has discussed the issue in detail and opined that for implementation of GO Rt No 597 Law(B), Department dated 31.10.2018 for enhancement of ceiling of claim amount up to Rs.40,00,000/- for the ongoing concluded agreements of all Engineering depts. may be considered duly getting Government permission with Government instructions for all ongoing and future works.

And in respect of future works, necessary clause may be included in Tender document as per GO Rt No 597 Law (B), Department dated 31.10.2018

Action: Engineer-in-Chief (AW), I&CAD Dept


Engineer-in-Chief (Irrigation)
Irrigation &CAD Department


Engineer-in-Chief (AW)
Irrigation &CAD Department and
Chairman, Board of Chief Engineers