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28 FEB 2011

GOVERNMENT OF ORISSA
WORKS DEPARTMENT

No.EAP(Cell)-13/11 2182 /W.,Dt. 28.2.11
From

Dr. D.Das.
Addl. Secretary to Government

To
The Chief Engineer,
World Bank Project, Orissa, Bhubaneswar.

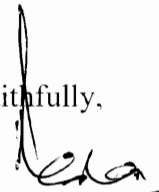
Sub: Proceedings of the State Level Empowered Committee (SLEC) Meeting held on 11.2.2011 in the 2nd Floor Conference Hall of the Secretariat.

Sir,

I am directed to send herewith a copy of the proceedings of the meeting of the State Level Empowered Committee (SLEC) held on 11.2.2011 in the 2nd Floor Conference Hall of the Secretariat under the Chairmanship of Chief Secretary, Orissa for your information and necessary action.


All concerned may please be intimated accordingly.

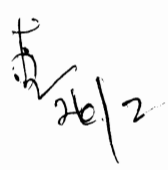
Yours faithfully,


Addl. Secretary to Government

Memo No. 2183 /W.,Dt. 28-2-11

Copy forwarded to the P.S. to Chief Secretary, Orissa for kind information of Chief Secretary.


Addl. Secretary to Government


26/2


24/2/11

**PROCEEDINGS OF THE STATE LEVEL EMPOWERED COMMITTEE (SLEC)
MEETING HELD ON 11.02.2011 IN THE SECOND FLOOR
CONFERENCE HALL OF THE SECRETARIAT**

The meeting of the State Level Empowered Committee (SLEC) constituted by the Government to monitor implementation of World Bank financed Orissa State Roads Project was held on 11.02.2011 at 12.30 PM in the second floor conference hall of the State Secretariat under the Chairmanship of Chief Secretary.

At the outset, EIC-cum-Secretary welcomed all the members of SLEC and briefed them on some of the critical issues such as substitution of materials for GSB (Granular Sub-Base) in the road work and lack of participation of the lead partners in implementation of the project. He requested Chief Engineer, World Bank Projects to give detail presentation on the above issues.

A) Variation proposal of the Granular Sub-base (GSB) item

The Chief Engineer World Bank Projects informed the Committee that Contracts for the civil works for three roads were awarded during November, 2008. He gave a detailed presentation with chronological development on the issue of GSB substitution. He appraised the Committee that the Supervision Consultant had suggested for change of GSB materials from naturally occurring moorum, gravel, sand or combination thereof as stipulated in the contract to 100% crushed stone materials on technical ground. This suggestion of Consultant was recommended to World Bank during November 2009. The technical aspects of above substitution were further examined with help of State Quality Control laboratory wherein it was observed that the naturally occurring materials failed to satisfy the technical requirements under field condition. The design aspect was also re-examined to optimize the cost aspect and it was recommended to reduce the thickness of GSB from 260mm as originally proposed in the DPR to 200mm. The World Bank team reviewed the above developments and communicated their views during March 2010 stating suitability of 100% crushed stone aggregates for use in GSB layers. However, the Bank had proposed to obtain views/ justification of specifying moorum, sand, gravel & their combination as GSB materials from the DPR consultant besides rechecking of road pavement design for any further optimization. Bank has also suggested to issue appropriate instructions to the contractor in the event of substitution of GSB item. Accordingly, the contractors were instructed during last week of March to go ahead with executing the GSB layer with 100% crushed stone aggregates as substitute materials. However, during the next visit in April 2010, the World Bank Mission suggested further due diligence to establish inappropriateness of the existing naturally occurring materials on technical grounds vis-à-vis appropriateness of the new proposed material besides cost liability as per the contractual provisions by taking opinion from the Accountant General.

It was informed by the Chief Engineer that with a view to continue work during the peak working season, the World Bank had given an interim no objection to carry out GSB using 100% crushed stone aggregates in 5 Km stretch for each road package. Further technical investigations were carried out as per the observations of World Bank and views of DAG (Audit) was also taken on the matter who had opined that additional cost arising out of the variation due to such substitution shall be borne by the Department subject to approval of the variation/deviation by the competent authority and drawl of addendum to the contract. These observations were communicated to Bank for their clearance during May 2010.



The World Bank however informed that opinion of DAG (Audit) appears to be based on an assumption that the "substitution of material" is a foregone conclusion and therefore Bank once again suggested specific opinion of AG on who should bear the cost as per Contract clause 108.4. Finally, the World Bank in their letter dated On 22 June 2010 had disapproved the suggestion of GSB citing contractual and legal consequences by observing that "non-availability of suitable GSB materials is a risk that is clearly envisaged in the contract and explicitly sought to be transferred alongwith the consequent cost to the contractor". The Chief Engineer World Bank Project in his presentation stated that the Bank has the opinion that "as per the contractual provisions, the contractor is expected to make good the non-availability, if any, of the material envisaged under the contract by providing suitable/substitute material including from alternative locations at his cost".

Above observations of World Bank were intimated to Government wherein it was decided to examine the issue by the Technical Committee (TC) comprising Chief Engineers headed by EIC (Civil), Orissa besides taking an independent view on the technical suitability of the quarry materials from IIT, Kharagpur. Accordingly, Civil Engineering Department of IIT Kharagpur was requested during last week of September 2009 to visit quarry sites along the project corridors and examine the quarry materials. The final report from IIT Kharagpur was received on 4th Feb, 2011 wherein it has been observed that materials of the quarries, mostly are, as such, not suitable in the present condition and some of them requires screening & blending. The observations of IIT Kharagpur was examined by the TC who have opined that screening of fines from the naturally occurring materials and their blending as suggested by IIT are practically impossible for such large work. Therefore the TC had also recommended for substitution with 100% crushed stone aggregates citing reason that similar materials are already been adopted widely all over the State as well as nationally by the road construction agencies. The TC has further suggested to deal the contractual matter in line with the observations of DAG(Audit). It was informed by the Chief Engineer that overall financial impact due to such substitution / variation, shall be about 5% of total project cost (roughly Rs. 19 Crores) on the basis of the rates offered by the Contractor during November 2009.

During the deliberation, the Principal Secretary, Finance raised the legal and contractual risks on the issue of GSB substitution and disapproval to the corresponding variation payment as communicated by the World Bank in their several correspondences addressed to the State Government, particularly with reference to application of Contract clauses. He suggested totake legal opinion from eminent law firm / legal or Contract Specialist / contract expert of IRC, whose credibility should be unquestionable.

The Principal Secretary to the Govt. Law Dept. also suggested to take legal opinion from an expert on this technical matter on the basis of observations as communicated by World Bank so as to facilitate Law Department/ State Govt to take appropriate decision.

After detailed deliberation, the Chief Secretary opined that there should not be any compromise on the quality of the work due to non-availability of such naturally occurring materials satisfying the technical specifications. He suggested to accept the recommendation of the TC for substitution with 100% crushed stones for the GSB item in place of naturally occurring materials, to which all the Committee members agreed. Accordingly, it was decided that the work for the GSB item should continue with the substitute material (i.e. crushed stone). The

Committee also opined to seek legal opinion on the contractual ^{obligation} issue from a legal firm / contractual expert of repute within a month time. The Chief Secretary directed Chief Engineer, World Bank Projects and EIC-cum-Secretary to take necessary followup actions accordingly. He also observed that Contractor should not stop in doing the work with the substituted material.

B) R&R entitlements to the persons missed out during DPR stage

The issue of Resettlement and Rehabilitation (R&R) to the persons missed out during DPR stage was discussed by the Committee. The Chief Engineer, World Bank Projects informed that 207 numbers of new R&R entitlement cases within the first milestone kilometer of three ongoing road works are being reported during detail verification in the field on the basis of 4(1) Notification date. This will require additional Rs 60 lakhs for payment and the expenditure on R & R is reimbursable by the World Bank. He further informed that concerned RDCs have already approved payment to 91 such new cases out of 207 as reported.

The Revenue Secretary opined that as per Orissa R&R policy, all R&R cases need to be considered with cutoff date as that of 4(1) Notification. The Committee approved the above proposal and directed Chief Engineer, World Bank Projects to take necessary followup action.

C) Lack of participation of Lead partner in all the three Civil Work contracts

The issue of non-participation by the lead partners in the execution of work as repeatedly informed by World Bank since April 2010 was discussed by the Committee. The Chief Engineer, World Bank Projects informed the Committee that lead partners in all the three packages were asked to justify their involvement as per the JV contract. However, the Lead partners have clarified that performance of the JV is an integrated operation and not by individual partners and both partners are jointly and severally liable to the Employer. They have also clarified that the man, material and machinery are all managed by the JV and the receipts and expenditures for the Work are operated in the JV a/c. He requested the Committee for legal guidance on the matter to resolve the issue.

The EIC-cum-Secretary informed the Committee on various Articles of the JV agreement in the contract which clearly stipulates 51% participation by the lead partner in the form of cash flow to the project, key equipments/machinery and technical personnel for site management / operation. He cited relevant clauses of the JV agreement with provisions in the contract in the event of breach in this regard.

The Chief Secretary expressed his concern on the red flag status of the project due to slow progress of work and cautioned that the contractors shall be held responsible for such non performance / red flag status of the work. He suggested to caution the contractor as per the contractual provisions of JV agreement under the contract.

The meeting ended with thanks to the Chair.


CHIEF SECRETARY



List of Members who attended SLEC meeting on 11.02.2011

1. Sri Bijay Kumar Patanaik, IAS, Chief Secretary
2. Sri R. N. Senapati IAS, Development Commissioner
3. Sri J. K. Mohapatra, IAS, Principal Secretary to Govt. Finance Department
4. Sri D. Dash, Principal Secretary to Govt., Law Department.
5. Sri R. K. Sarma, IAS, Commissioner-cum Secretary to Govt. Revenue Department
6. Er. S. K. Ray, EIC-cum-Secretary to the Govt, Works Department
7. Sri B. P. Singh , Special Secretary to the Govt. Forest & Environment Department
8. Er. B. K Behera, Chief Engineer, (DPI&Roads)
9. Er. N. K. Pradhan, Chief Engineer, World Bank Project