



NATIONAL HIGHWAY AUTHORITY

Secretariat HQs

CONFIRMED MINUTES

Subject: **The 304th Meeting of the NHA Executive Board Held on June 12, 2018 at Islamabad**

Introduction

The 304th meeting of the National Highway Authority's Executive Board was held at 1630 hours on June 12, 2018 at the Auditorium of NHA Headquarters, Islamabad. Mr. Jawwad Rafique Malik, Chairman, NHA presided.

Agenda Item 1

Confirmation of Minutes – 303rd Meeting of the Executive Board held on June 05, 2018

Decision

The NHA Executive Board confirmed its minutes of the 303rd Executive Board meeting held on June 05, 2018.

Action By : Secretary NHA

Agenda Item 2

Approval of Accounts of NHA (Entity) for the Year Ended June 30, 2017

Agenda Item 3

Approval of Accounts of Road Maintenance Account (RMA) for the Year Ended June 30, 2017

Decision

After detailed deliberations, the NHA Executive Board deferred the subject agenda item with the directions to re-submit the same with salient analysis of financial statements and Management Letter from the Auditors to be presented to the Executive Board.

Action By : Member (Finance)

Agenda Item 4
Operational Issues Regarding Signed Leases of ROW

Decision

The NHA Executive Board accorded decision in the following operational issues:

S#	Operational Issues	Decision of the Board
1	<p><u>Transfer of Lease Rights to legal heirs/other than legal heirs</u></p> <p>Under Conditions of the Lease Agreement vide clause 4.19-Lease Transferable;</p> <p>“The agreement is transferable with consent and approval of NHA once the facility is established and becomes operational. However, status of approved business of the said land shall not be changed.”</p> <p style="text-align: center;">or</p> <p>“The agreement is transferable with consent and approval of NHA, however status of approved business of the said land shall not be changed.”</p> <p>Earlier, lump sum transfer fee of Rs. 50,000/- was charged for transfer of lease rights however, in Leasing Policy 2009 the same was increased to Rs. 200,000/- per kanal (or revised from time to time) irrespective to legal heirs or to others.</p>	<p>I. Lease transfer fee in case of transfer of lease rights to legal heirs shall be kept at Rs. 100,000/- per kanal as lease rights will remain with the same family.</p> <p>II. Transfer of rights other than legal heirs shall be allowed by charging transfer fee @ Rs.5,00,000/- per kanal subject to fulfillment of conditions of the lease transfer Clause. This fee will also be charged in case of change in constitution of partnership (where lease is operated under partnership) by entering or exiting any partner in partnership as per %age share of outgoing partner.</p>
2	<p><u>Change of Business</u></p> <p>As per the in-vogue conditions of the lease agreement, change of business has been explained in two clauses i.e. 4.19 & 6.5 as narrated below:</p> <p>4.19 “The agreement is transferable with consent and approval of NHA once the facility is established and becomes operational. However, status of approved business of the said land shall not be changed.”</p> <p>6.5-Change of Business Clause “The Lessee shall not change his business without prior written approval of the NHA (Lessor) and in all such cases, the rental charges shall also be</p>	<p>Ban is imposed on Change of Business (NHA Executive Boards decision in this regard in its 206th meeting held in August 2011 may be withdrawn). The existing requests in this regard will also be treated in the same manner. However, request for <u>addition of related business</u> will be allowed, <u>upon payment of lump sum fee of Rs. 3 Million</u> subject to availability of space and upon fulfillment of highway safety aspects and distances.</p> <p>Related businesses include</p> <ul style="list-style-type: none"> • <i>Addition of POL Filling facility</i>

S#	Operational Issues	Decision of the Board
	<p>negotiated but in no case shall be decreased.”</p> <p>However, NHA Executive Board in its 206th meeting held in August 2011 had imposed commercial fee for change of business accordingly, till date in all such cases commercial fee of Rs.2.00 million has been paid by lessees for change of business.</p>	<p><i>with already established CNG Station (considering present gas crises).</i></p> <ul style="list-style-type: none"> • <i>Installation of LNG with already established CNG/Filling Station.</i> • <i>Installation or Addition of automated service station/car wash facility</i>
3	<p><u>Change of location</u></p> <p>Lease Agreement is silent regarding change of location.</p> <p>Leasing Policy 2009 states that in case the lease site is established and the facility is required by NHA for planned utilization, the provision of an alternate site under these circumstances is subject to availability of land in adjacent vicinity. In such cases, the lessee shall not entitle for any compensation, claim/damages including loss of profit/opportunity cost.</p> <p>However, NHA Executive Board in its 206th meeting held in August 2011 had imposed Processing fee for Change of location at the option of lessee as Rs. 500,000/- per Kanal (non refundable).</p> <p>Processing fee shall not be charged in case NHA forces the lessee for change of location under planned utilization Clause for road construction.</p> <p>NHA will provide alternate site (in case a forced change of location) within the district limit rather than anywhere on NHA network.</p> <p>Rental for alternate site shall be assessed as per ECC approved criteria i.e. 10% of the notified DCO rates in urban areas and Rs.50,000/- per kanal in the remote and under developed areas if annual average price assessed by the Revenue Department is less than Rs.50,000/-</p> <p>Alternate site in the urban areas will not be allowed in future.</p>	<p>Henceforth, no change of location either under Planned utilization, Forced relocation or at the option of the lessee shall be allowed. <u>The existing requests in this regard will also be treated in the same manner.</u></p>

S#	Operational Issues	Decision of the Board
4	<p><u>Subletting of lease site for its operations to Oil Marketing Company</u></p> <p>Under Explosive Rules, individuals are not allowed to independently carry out the oil business rather the dealer / operators are required to sublet the operations of the filling station to the respective Oil Marketing Company (OMC). Therefore, subletting of the operations of a filling station to OMC is a mandatory requirement of Explosive Department.</p>	<p>Lessee's requests for subletting of leased site to Oil Marketing Company (OMC) as required under Explosive Rule will be allowed with the approval of Member concerned.</p>
5	<p><u>Registration of lease agreement with Registrar under Registration Act 1908.</u></p> <p>Under Registration Act, 1908 vide Clause 17(d) Captioned "Documents of which registration is compulsory", leases of immovable property are required to be registered. Therefore, NHA already signed leases if not registered earlier, are required to be registered with the respective registrar for which lessees make request from time to time.</p>	<p>Being legal requirement, Member concerned is allowed to approve such requests.</p>

The NHA Executive Board also amended its earlier decisions juxtaposed below:

<u>NHA Ex. Board Decision Regarding Leasing</u>	<u>Executive Board Revised Decision Regarding Leasing</u>
<p>10.20 The Executive Board in its 206th meeting held in August 2011 considered the Working Paper and approved following recommendations concerning ROW management:</p> <p>I. <u>Processing fee for Change of Business/Location.</u></p> <p>a. In case of request for change of location by the lessee, commercial fee shall be imposed.</p> <p>b. Change of Business from Shops to Filling/CNG Stations involves additional land which will be charged as per ECC approved criteria for new</p>	<p>10.20. Revised decision given below:</p> <p><u>Ban on Change of Business/ Location in Signed Leases</u></p> <p>No change of location either under planned utilization, Forced relocation or at the option of the lessee will be allowed. <u>The existing requests in this regard will also be treated in the same manner</u></p> <p>Ban shall also be imposed on</p>

<u>NHA Ex. Board Decision Regarding Leasing</u>	<u>Executive Board Revised Decision Regarding Leasing</u>
<p>leasing with non refundable commercial fee.</p> <p>c. Processing fee for Change of location is fixed as Rs. 500,000/- per Kanal (nonrefundable) where lessee requests NHA for the option.</p> <p>d. Processing fee shall not be charged in case NHA forces the lessee for change of location under planned utilization clause for road construction.</p> <p>e. NHA will provide alternate site (in case of forced change of location) within the district limits rather than anywhere on NHA Network.</p> <p>f. Rental for alternate sites shall be assessed as per ECC approved criteria.</p> <p>II. Complete ban is imposed on processing of NOC cases on the links to Motorways in the interest of road Safety and already issued offer letters/NOC shall be cancelled.</p> <p>III. Commercial fee, which varies from Rs.2 to 4 Million, will be allowed to be refunded to the applicant in case of non establishment of the facility or if NHA withdraws the NOC. However, 20% management charges will deduct and balance 80% fee refunded to the applicant.</p> <p>10.21 The rates for the processing fee and other charges imposed by NHA concerning ROW management will henceforth be revised of an yearly basis with the approval of the Chairman NHA based on CPI. However, matter will be required to be placed before the Board for review after every five years.</p>	<p>Change of Business. <u>The existing requests in this regard will also be treated in the same manner.</u> However, request for <u>addition of related business</u> shall be allowed, <u>upon payment of lump sum fee of Rs. 3 Million</u> subject to availability of space and upon fulfillment of highway safety aspects and distances.</p> <p>Related businesses include</p> <ul style="list-style-type: none"> • <i>Addition of POL Filling facility with already established CNG Station (considering present gas crises).</i> • <i>Installation of LNG with already established CNG/Filling Station.</i> • <i>Installation or Addition of automated service station/car wash facility</i> <p>Sub Point II shall remain intact.</p> <p>Points III of sub Para-I of the decision will be withdrawn</p> <p>Para 10.21 of the decision is also amended as “Henceforth revision of fees will be reviewed by NHA Ex. Board on as and when required basis.</p>

The Board further directed NHA to resolve the issues being faced by the Oil Marketing Companies (OMCs) at its administrative level or to be presented before the Board, if fall within the competency of the Board.

Action By : Member (Finance)

Agenda Item 5

Award of Works for Rehabilitation and Improvement of Existing Carriageway from Peshawar to Dera Adam Khel (Section-3) Km 0+000 – Km 34+350 (34.35 Km)

Decision

The NHA Executive Board approved award of works, rehabilitation and improvement of existing carriageway from Peshawar to Dara Adam Khel (Section 3) Km 0+000-34+350 (34.35 Km) to M/s Nasrullah Jan Inamullah Khan & Co- M/s Karcon (Pvt) Ltd Joint Venture (NIC-Karcon JV) at the lowest evaluated bid price of Rs. 1,834,318,830/- (Rupees one billion, eight hundred thirty four million, three hundred eighteen thousand, eight hundred thirty only), which is 37.43% below Engineer's Estimate based on CSR-2014.

The Board directed that any proposal for variation initiated by the Contractor in the subject project will be submitted to the NHA Executive Board for decision even it is within the competency of Member/Chairman NHA.

Action By : Member (Engg. Coord)

Agenda Item 6

Variation Order 02, Package-III for Construction of Hassanabdal – Havelian E-35 ICB-E-35-III: Sarai Saleh to Havelian (Km 39+611 to Km 58+711)

Decision

The Board deliberated but deferred the subject agenda item due to iftar time of fast.

Action By : Member (North MWs)

Agenda Item 7

Approval of Award of Periodic Maintenance Work through Contract No. RMA-PM-NHA-GB-2016-17-08 from Km 444 – Km 806 on the KKH (N-35) of Gilgit – Baltistan Region under NHA AMP 2016-17

The subject agenda item was not discussed due to paucity of time.

Action By : Member (North Zone)

Agenda Item 8

Approval for Award of Ten (10) NOs of Periodic Maintenance Works of South Zone (Sindh South & Sindh North) for AMP 2016-17

The subject agenda item was not discussed due to paucity of time.

Action By : Member (South Zone)

Agenda Item 9

Construction of Hostel Block for Trainees at NH&MP Lines HQs, Sector H-8/2, Islamabad

Decision

The NHA Executive Board approved construction of Hostel Block for Trainees at NH&MP Lines Headquarters, Sector H-8/2, Islamabad for 1,000 trainees out of 50% share of fine money of NH&MP subject to issuance of NOC by MoC/NTRC and PWD.

Action By : Member (Planning)/IG (NH&MP)

Additional Agenda Item

Implementation of Supreme Court Order (In Criminal Original Petition No. 226/2016) Dated January 03, 2018

Decision

The NHA Executive Board based on the discussion and recommendations of the sub-committee of the Board, approved the following:

- a. Regularization orders of 78 officers in BS-18 & BS-19 is hereby withdrawn ab-initio in the light of Paragraph 7 of ICA judgment dated April 09, 2015 read with Paragraph 26 of judgment in case of “Syed Mubashir Raza Jaffri Vs Employees of Old Age Benefits” having no regular posts to adjust them at the time of regularization.
- b. The services of the above referred 78 officers be placed on contract basis as per their original terms and conditions of initial contract service for the period of two years w.e.f the date of issuance of de-notification order of regularization. Thereafter, their services may be extended on yearly basis by the Executive Board, being appointing authority for BS-18 & BS-19 on the basis of their satisfactory performance.

The Board also directed that cases of these 78 officers be brought before the Board in the next meeting with complete details to ascertain the process/eligibility criteria of their appointment for their future retention.

Conclusion

The Chairman wrapped up the meeting by thanking the Board Members for their active participation and useful input.
