



NATIONAL HIGHWAY AUTHORITY

27 Mauve Area, G-9/1, Islamabad

No. (03)-DRC/NHA/11/01

Islamabad, July 23, 2011

Subject: SOP for Handling Contractual Disputes

1. NHA is engaged in hundreds of billion rupees contracts and disputes arising out of these contracts are also huge in terms of claims against NHA. In recent past it has been seen that except few odd cases which were contested through institutionalized litigation steering committees, NHA has lost by and large most of the cases causing hundreds of millions damage to National Exchequer. In a recent case six similar arbitration cases were decided against NHA in a most causal way due to extremely poor rather negligent defense by NHA lawyers.

2. It is therefore, imperative that some SOP should be laid out to contest contractual disputes with dedication and transparency to save hundreds of million rupees of NHA. It is therefore, suggested that Dispute Resolution and Litigation committees should be formed to handle contractual and land disputes as follows:

Nature and Value of Dispute		DR& LC Proposed	
i.	Land disputes upto Rs. 10 million	PD of Project DD/AD(Admn) Project AD Legal/Land in the vicinity	Chairman Member Member
ii.	Land disputes above Rs. 10 million	GM Project DD/AD Land Project/Region DD/AD Legal Project/Region DD (Admn) Regions/Project	Chairman Member Member Member
iii.	Contractual disputes upto Rs. 50 million	PD of Project AD Legal Project/Region DD/AD Construction HQ NHA	Chairman Member Member
iv.	Contractual Disputes Rs. 50 million to Rs. 500 million	GM Project Director (Const.) NHA HQ DD/AD Accounts Project DD/AD Legal Project/Region	Chairman Member Member Member
v.	Disputes above Rs. 500 million or unquantified	M/(Admn) or M/(Finance)/ GM(B&A)/ GM(Finance)/ GM(Audit) GM(Construction) Director (Accounts) Project Director (Legal)	Chairman Member Member Member
vi.	Encashment of bank guarantees above Rs. 10 million and foreign litigation	M/(Finance) GM(Audit)/GM(Finance) Director (Accounts) Project GM/Director (Legal)	Chairman Member Member Member

3. The Committee at serial No. I & iii above i.e. PD level committees will be reporting to respective GM office where as all other committees shall have dispute resolution cell (DRC) NHA as their Secretariat/base office. DRC M-1 shall for time being serve as DRC NHA till proper DRC NHA is put in place.

4. Committees and Notification Responsibility

Steps in handling all above six levels of disputes and responsible individual/office are as following:

- i. Land disputes upto Rs. 10 million shall be reported to GM(EALS) who will notify the committee.
- ii. Land disputes above Rs. 10 million will be reported to member (Admn) who will notify the Committee.
- iii. Contractual disputes upto Rs. 50 million shall be reported to Member concerned who will notify the committee.
- iv. Contractual disputes at Para 2 (Serial No. iv to vi) above will be reported to Chairman NHA who will notify the appropriate committee through DRC NHA for further actions.

5. **Reporting Responsibility**

Employer Representative in every contract i.e GM/PD will be responsible to report occurrence of dispute when any financially adverse Engineer /DAB/DRE decision or challenge to land compensation award (By NHA or land owner) to relevant authority in Para 4 above. Copy of occurrence report shall be given to Secretary DRC NHA for following:

- i. Director (CA&DR) in P&CA Section will be coordinator for all contractual and land disputes management only. He will be Secretary DRC NHA assist by DRC M-1 staff.
- ii. Director (CA&DR) will have direct access to authorities at Para 4 for this purpose and will ensure no limiting date is missed due to routine file movement or availability of concerned decision making authority.
- iii. Director (CA &DR) will keep record of all disputes but physically manage only disputes at Sr. # iv to vi at Para 2 above.

6. Procedure to be followed by Committees

- i. The chairman of the Committee will immediately call meeting of the committee on notification and make preliminary assessment of the case.
- ii. Committee shall collect all relevant record and prepare upto date chronology of events/actions.
- iii. Committee shall list down contractual and legal limitations and limiting dates if any.
- iv. Committee shall meet convening officer with their proposed approach to contest the case.

- v. For all cases involving claims or having values more than Rs. 10 million lawyers shall be selected by the committee and paid market fee under Chapter 4, Short Term Consultants Head of NHA Code. Legal Cell NHA can help in selection of appropriate Counsel.
- vi. Committee will supervise and support the legal team and vet all submissions to Courts/Arbitration tribunals before submission and shall be responsible to feed any and all necessary data/correspondence to the Counsel. A copy of all submissions shall be kept by the Committee.
- vii. Chairman committee shall be designated as authorized representative of NHA by the Chairman for respective case.

7. **Conclusion**

The SOP proposed is a beginning to safeguard against loss of hundreds of millions through poorly contested NHA cases/arbitrations either due to willful connivance or deficient technical guidance to NHA Counsels. The experience of DRC M-1 has been very fruitful hence, same is being attempted at larger canvas. The SOP will be improved in light of the experience gained in implementation in yearly DR Review Meeting at NHA HQ.

8. This SOP is issued with the approval of Chairman NHA, please.



(Naseer Ahmed Rana)

Member (Admn)

Chairman Steering Committee M-I/M-9 Litigation

Distribution:

- All Members
- All General Managers (HQ/Region/Projects)
- All Project Directors
- PS to Chairman NHA



NATIONAL HIGHWAY AUTHORITY

27 Mauve Area, G-9/1, Islamabad

No. (03)-DRC/NHA/11/11

Islamabad, September 07, 2011

Subject: **SOP for Handling Contractual Disputes**

Reference: SOP issued vide letter No. (03)-DRC/NHA/11/01 dated Jul 23, 2011.

1. The subject SOP was forwarded to all Members, General Managers and Project Directors of NHA on 23rd July, 2011. It has been observed that SOP is not being implemented seriously in the field. There are numerous high value disputes on which Senior Procurement & Contract Specialist has pointed out shortcomings of NHA defense and advised for further processing but no notification of DR& LC has been received in DRC NHA as per requirement of Para 2 of above mentioned SOP. There are other cases at stages of "DAB" or "The Engineer" decision stage which need to be taken up by responsible officials through DR& LC committees. It is reiterated that any loss occurring to NHA due to negligent handling of any dispute shall be attributable to concerned Project Director /General Manager prior to formation of DR&LC committees.

2. Therefore it is imperative that all senior echelons of NHA implement the SOP in all disputes without any delay/exception. Any suggestions to improve the SOP are welcome and same shall be incorporated in SOP after deliberation and approval of Chairman NHA.

3. Engineer Miss Sadia is performing duties of Secretary DRC NHA for the time being in terms of Para No. 05 of the SOP. Her telephone contracts 051-9032310 please. The Address of DRC NHA is:

Naseer Ahmed
7.9.11

(Naseer Ahmed Rana)

Member (Admn)

Chairman Steering Committee M-i/M-9 Litigation

Distribution:

- All General Managers (Region/Projects)
- All Project Directors

Copy to:-

- All Members, NHA
- PS to Chairman NHA