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Builders' Association of India

(All India Association of Engineering Construction Contractors and Builders)

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Ref.:74/A/2022-23 dated 20th April 2022

To,

Smt. Nirmala Sitharaman Ji

Hon'ble Minister of Finance and Minister of Corporate Affairs,

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Respected Madam,

**Sub: Abnormal increase in Construction materials such as Steel, Cement, Bitumen, Diesel etc.
Request to solve the issues concerning of Construction Contractors and the Construction Industry.**

Builders' Association of India (BAI) is an apex all India body of Engineering Construction Contractors and Builders, founded in 1941, it has more than 25,000 business entities as members through its 200 plus Centres (Branches) throughout the country. Regional, Associations Affiliated to BAI form indirect membership of more than 1,00,000 members. The fundamental aim of the Association is to bring about all round improvements in the construction sector, while striving towards resolution of operational as well as policy level problems faced by the Construction Industry. This involves making efforts to obtain from policy makers and authorities, the level of attention that the construction industry deserves in view of its tremendous contribution and importance to the economy.

Members of BAI are Government as well as Private Contractors dealing in Building Construction, Road Construction and other Infrastructural works. Most of these contractors are registered in Government / Semi Government Departments such as NHAI, CPWD, MES, State PWDs, State Housing Boards, Local Self Governments, Railways, etc. All BAI member contractors have represented to BAI that there is sudden **abnormal rise in prices of Steel, Cement, Bitumen, Diesel, etc.** The various State Governments has a number of policies in its construction related model agreement which lack clarity. Attempts have been made by BAI to bring it to the notice of the Government from time to time but no exact solution has been reached yet. Now under the your leadership and foresight in the hope of resolving such serious issues, for the long term which ultimately bring forth strong development of the States of India, the following 6 points have been mentioned.

Issues:

1. Unbearable price increase due to Covid epidemic disaster.
2. Reimbursement of GST surcharge on ongoing works.
3. The cost of tenders is subject to GST.
4. Matter of updating Schedule of Rates (SOR).
5. Standard Bid Document (SBD) (Balance Contract).
6. Reimbursement of increased price of construction materials on actual basis.

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1. Unbearable price rise due to covid epidemic disaster:

The Covid epidemic has led to huge inflation / price hike in various building materials like Diesel, Bitumen, Cement, Steel etc. The prices of major building materials have been increased from 50% to 80% as follows:

Table-01

Sr. No.	Description	Rate at work commencement	Current rate
1	Diesel *	Rs. 60/- per litre	Rs. 90/- per litre
2	Bitumen	Rs. 33,220/- per MT	Rs. 62,306/- per MT
3	Cement	Rs. 5100/- per MT	Rs. 6500/- per MT
4	Steel	Rs. 48,500/- per MT	Rs. 73,800/- per MT
5.	Aluminium Pipe	Rs.190/- Per Kg	Rs. 315/- Per Kg
6.	Aluminium form work material	Rs.176/- Per kg	Rs,387/- Per kg.
7.	Copper	Rs.708/- Per Kg.	Rs.829/- Per Kg.

**As on 12th April 2022, the Diesel price is Rs. 104/- per litre at Mumbai.*

Such an unprecedented and massive price increase would never have been expected or counted in a bid. It is essential to have a proper price escalation reimbursement of the increased cost has to be provided in the contract of work for execution of such works like from the ceiling rate with star rate from the date of submission of tender; otherwise it is impossible to provide reasonable quality of work by incurring heavy additional cost.

If no such action is taken from the Works Authority's part, either the contractors will be able to survive which will again be a disaster for the development works of the Government or it will affect the quality of prestigious projects, which is known to everyone.

It is important to note that controlling inflation is one of the basic responsibilities of the current Government and we fully support the Government's efforts in this regard, but the contractors are not in a position to survive without an immediate government decision in this regard.

Therefore, either the Price Adoption adopted by the Planning Commission of the Government of India with a balanced formula has to be reimbursed. Preferably with reimbursement of actual price increase with 'Star Rate' formula or the contractors should be given the option of dismissal without any result.

2. Reimbursement of GST surcharge on ongoing works on 30.08.2017.

So far, most of the Government contracts are fixed price contracts where the price bid has already been fixed at the time of bidding. At that time there was exemption from service tax and VAT was levied at the rate of 0.50%.

From 01.09.2018, Road construction activity which had a total tax burden of 0.60% has been increased to 12% tax, which is to be paid as additional tax burden of 6% to 7% as per the new law of GST on current contracts after the benefit of tax credit happens.

It is not possible to reimburse the tax increase at the competent level due to lack of Change in Law clause in certain agreements of the State Government which may be under the policy of the Government. Otherwise it has negatively affected the profitability and liquidity of such ongoing works to such an extent that it has hampered the progress of catalytic industries like infrastructure.

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Old regime of VAT and Service Tax	Provisions under the new GST law
<p>The service provided by way of construction, repair of roads, bridges, etc was exempted from Service Tax vide entry no. 13 of the Mega Exemption Notification no. 25/2012 dt 20.06.2012.</p> <p>Under the section 14A of the VAT Act, 2006 the said activity of works contract was taxable at a composite rate of 0.60% VAT.</p>	<p>The said service is now taxable at the rate of 12% against previous 0.60% rate.</p>

Negative impact on ongoing project works:

NHAI has also complied with their letter no. **NHAI / F & A / 2017-18 / Service Tax / GST / SM dt.15.06.2017**, following the tax increase in road construction activity (before rate reduction notification from 18% to 12%):

1. Flexible Pavement Roads - 11.50%
2. Rigid Pavement Roads - 4.50%
3. Road Projects with Higher Strict Ural Components - 10.30%

Even after raising the GST tax rate from 18% to 12%, unbearable tax burden of 6% to 7% has been incurred. This will create a severe financial crisis on infrastructure works contracts on or before 30.06.2017.

Recently the rate of GST has been increased from 12% to 18% in the following works for Government Authority or Government Corporation which is to be implemented from 01.01.2022 (Notification no. 15/2021 dt 18.11.2021):

- 1) Canal, dam or other irrigation works;
- 2) Pipeline, conduit or plant for (i) water supply, (ii) water treatment, or (iii) sewerage treatment or disposal.
- 3) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- 4) A structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- 5) A residential complex predominantly meant for self-use or the use of their employees
- 6) Works Contracts involving predominantly earth work (that is, constituting more than 75 per cent of the value of the works contract).

Also, the rate of GST for the following works contracts services is to be increased from the current 0% to the new 18% when the work is to be done for a government authority or a government corporation (Notification no. 16/2021 dt 18.11.2021):

1. Pure services by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
2. Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Our Representations:

The additional burden of GST rate of the Government (fixed price contract) in the ongoing works on 30.06.2017 must be given to the Contractors as compensation as soon as possible. And NOTIFICATION NO. 15/2021 dt 18.11.2021 and 16/2021 dt 18.11.2021 for works in which the rate of GST has been increased, the contractors should also get the compensation along with the current bill.

3. Excluding the cost of tenders exclusive of GST (exclusive of GST).

3.1 Basically, GST is an indirect tax levied on the service recipient (Project Authority / R&B) and paid to the government. (Indirect tax means a type of tax where the effect and burden of the tax is the same does not fall on the entity. It is collected by the government through intermediaries such as service providers, retailers or manufacturers. And the final tax amount is paid by the buyer of the goods or the recipient of the services. Simply put, indirect taxes are taxes that can be passed from one person to another. It is not levied directly on the taxpayer's income, but is levied on the expenses incurred by him.)

3.2 Therefore, all the project authorities except NHAI, MORTH, NHIDCL, other state governments, etc. have already started inviting all their projects through bids at prices other than GST (based on the basics of indirect tax).

3.3 The worksheet contracted by the contractor is defined as a "service" under GST law in which the final recipient of our service is the state government / government authority.

3.4 Therefore, the government on one hand levies GST and on the other hand pays GST to the contractors so that they can repay to the government treasury.

3.5 The GST Council has from time to time revised GST rates on various services, including our works contracts but not limited to them.

3.6 Therefore, legally R&BD, Government is bound to reimburse the GST portion collected and collected by the Finance Department of Government. However, due to the lack of clarity of GST laws in the Project Authority, these changes in GST rates have invited various litigation burdens on Government and created avoidable ambiguity as to who will bear the increased burden of GST.

3.7 In the constitutional parlance it is called (Unjust Enrichment) if the government unjustly enriches itself by imposing an increase in taxes on one side and refusing to pay the project taxes on the other side.

3.8 Therefore, in compliance with the basic rules of indirect taxation and avoidance of claims relating to the contract, it is in the interest of the Government to invite non-GST bids and then collect and pay the existing GST rate at that time.

4. Matter of updating Schedule of Rates (SOR).

SOR of many State Governments has not been updated since 2015-16. This has been followed by huge changes like GST, increase in royalty rate, massive price hike etc.

R&BD, State Government's SOR rates are about 50% lower than CPWD's (Central Public Works Department) SOR.

Small, medium and unorganized contractors tend to rely on government SOR as a basis. And then bids without evaluating the cost which is why so many bids are filled at such an exceptionally low rate that it is not possible to work practically. It is a shame for the government and because of which the general public ultimately suffers from sub-standard quality in government infrastructure.

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As a state flag barrier, R&BD, Government should continue to prepare and publish SORs on an annual basis as per market rates, taking into account the actual market prices of various materials.

SOR has not been improved in last 3 years. Forgetting SOR is an item where the cost of basic commodities is more than the entire item of SOR.

Therefore, it has become imperative to revise the SOR on an annual basis to reflect the true reality of the market.

5. Standard Bid Document (SBD)

All disciplined project authorities like NHAI, NHIDCL, MORTH, various other state governments use Standard Bid Document or Model Agreement to bring uniformity, transparency and balanced achievement of construction agreement.

Benefits of SBD:

- a) Transparency in obtaining construction contracts and beneficial to both parties
- b) Uniformity (balance contract)
- c) Less chances of vague or incorrect bids
- d) Equal opportunity for all contractors wishing to participate in the bidding process
- e) Increase healthy competition
- f) Balanced agreement will reduce litigations and interest burden on government in the long run.
- g) Ease of implementation for government administration
- h) Increases ease of doing business for contractors

Questions arising out of SBD deficiency:

- a) Non-transparent way of obtaining construction contract
- b) A bidding document in favor of certain contractors
- c) Great chances of contractors making mistakes in reading and understanding such huge documents in such a short period of time during bidding.
- d) As a result of gross ambiguity in the execution of the contract, either the quality is affected or the government is burdened with litigation.

Infrastructure construction contracts have a high degree of complexity which requires a very precise creation for them and in the drafting of policies and contracts. Which includes the following:

- a) 2 representatives of road and building department.
- b) 1 Senior reputable retired R&BD officer who has worked in this SBD domain.
- c) 2 representatives of Builders' Association of India.
- d) As a result of gross ambiguity in the execution of the contract, either the quality is affected or the government is burdened with litigation.

Important issues to include in SBD:

- A. Inflation.
- B. Bid cost should be non-GST and actual payment of GST.
- C. Provision of change in law.
- D. Transparent provisions in ROW Clearance, Time Limit, Security Deposit, Performance Guarantee, Termination, Force Major etc.
- E. Determination of liability of both parties.

6. Reimbursement of increased price of construction materials on actual basis.

All contracts, either Government or Private should have 'Star Rate' with inherent 'Price Variation Clause' for reimbursement of increased prices of Major Raw materials,

The Government of India may kindly consider amending the price variation clause incorporating Price Adjustment (Increase or Decrease) for Works (Escalation Clause) in all contracts of cement, steel and all other materials used in the construction industry with actual price increase. In this regard, a workable solution with the manufacturers could be worked out in due course.

Madam, it is also not out of place to mention that, any increase of construction material price will have consequential effect on the cost of housing and also will affect the infrastructure projects adversely, causing huge negative impact on the national economy.

Madam, we therefore, request you to kindly look into the **above issues concerning of Construction Contractors and the Construction Industry.**

Thanking you,

Yours faithfully,

Nimesh Paatel

**NIIMESH PAATEL
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- 60. Shri Ashwani Kumar Ji, IAS**
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- 62. Smt. Usha Sharma Ji**
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- 64. Dr. V. Irai Anbu Ji, IAS**
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- 65. Shri Somesh Kumar Ji, IAS**
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Public Sector Undertakings (PSUs)

- 70. Shri Pramod Agrawal**
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- 77. Ms. Soma Mondal Ji**
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