



DRAFT

REPORT OF THE WORKING GROUP

ON

**REGULATORY FRAMEWORK,
INCLUDING SELF REGULATION &
ISSUES LEADING TO TIME & COST
OVER RUNS IN THE PROJECTS FOR
CONSTRUCTION SECTOR**

12th PLAN

(2012-2017)



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1.0 Preface

In the context of the formulation of the Twelfth Five Year Plan, Planning Commission has set up a Steering Committee on Construction to study and analyze the Indian Construction Industry to suggest policy framework and to recommend the measures for self regulation for the constituents of the Construction Industry along with the mechanism for implementation of the recommendations.

For facilitating work by the Steering Committee, a working group on Regulatory Framework, including Self Regulation & Issues leading to Time & Cost Over Runs in the Projects for the Construction Sector has been constituted as per CIDC Letter No.2253/12th-National Plan/WG2011 dated 22nd September, 2011 (Annexure-1). Composition of the Working Group is as below:

1. Shri. Cherian Varkey, President,
Builders Association of India (BAI) - Co-Chairman
2. Mr. Siddharth Singh, Secretary General,
Construction Federation of India (CFI) - Co-Chairman
3. Shri Sunil Mahajan, Director, CIDC - Convenor
4. Mr. S. Kanappan, EVP & Head - Heavy Civil Infrastructure SBG, Larsen & Toubro Ltd.
5. Dr. P S Rana, Director, Continental Construction Project Ltd
6. Mr. Bimlendra Jha, Vice President (Long Products), Tata Steel Limited
7. Mr. Cherian Thomas, Chief Operations Officer, IDFC Foundation
8. Shri. S.P. S. Bakshi, Chairman cum Managing Director, Engineering Projects (India) Ltd.
9. Mr. V Suresh, Principal Executive Officer, Hirco Development Pvt Ltd
10. Mr. A P Choudhary, Chairman-cum-Managing Director, Rashtriya Ispat Nigam Limited
11. Shri S S Gaur, Executive Director(Law), Housing & Urban Development Corporation Limited
12. Shri Sharad Javali, Advocate, Supreme Court
13. Shri Ankit Jain, Advocate, Supreme Court

This report of the Working Group has been prepared based on the discussions held during the working group meetings, Planning Commission document – Approach to 12th Plan and the study of similar initiatives being undertaken globally.

2.0 Overview

- Construction Sector is an integral part of India's economy. The realization of Indian Vision 2025 to emerge as a major economic power requires rapid growth in Infrastructure. Construction industry plays a pivotal role in developing country's infrastructure and accounts for nearly 45% of the total investment in the Infrastructure. Construction sector is also the second largest employer after the agriculture sector.
- Construction industry cannot be visualized as a single industry in view of the wide range of types and sizes of construction works. It covers a spectrum of activities carried out by a group of linked organisations providing design and engineering, supplying materials and equipment, carrying out construction work and providing operation and maintenance services.
- Construction industry can be broadly classified into two sectors i.e. organized and unorganized. The organized sector includes more than 30,000 organisations whereas the standalone contractors in the unorganized sector number more than 120,000.
- Significant contribution of the construction sector to the Indian Economy needs to be given more thrust in the 12th Five Year Plan. One of the reasons of indifferent state of Construction Industry, and rampant time and cost overruns experienced while executing the construction projects, is lack of formal training and systems related to skill assessment and certification of construction workmen.
- The approximate number of persons employed in Construction Industry are 37 million, where over 85% are serving as workers.
- One of the major problem that industry is facing at present is lack of workforce. In order to overcome this situation, members suggested to create an organizations which has central pool for construction industry, who will look into the welfare of the workers and ensure that organizations hiring them are taking care of their welfare.

3.0 Impediments faced by the Industry

- CONSTRUCTION has been declared as an INDUSTRY: but has presently NO REGULATORY FRAME WORK on an "ALL INDIA BASIS".

Examples: "NATIONAL BUILDING CODE" has been evolved & so also "COMMON GENERAL CONDITIONS OF CONTRACT" but have not been mandated as applicable either by Govt. of India or any one of the States.

- No common: "CONSTRUCTION LAW" exists.
- No common Regulatory Authority available on Pan India basis, resulting incompatibility among the Institutions/ Organizations.
- Both service and sales tax are applicable for Construction Industry
- The Construction activities are administered through almost 32 laws, rules and statutes.
- There is no singular nodal agency empowered by the Government to administer the construction activities in the country.
- Regulations not well-defined for the construction industry – residential and commercial buildings, infrastructure projects including roads, ports, harbours and metros
- Clear thoroughfare land availability during tendering stage itself
- Body to monitor roadside encroachments before and after execution
- Awareness and lack of knowledge on sustainability

4.0 Thrust Areas

The following thrust areas that need to be addressed by the Working Group on Regulatory Framework, including self regulation & issues leading to time & cost over runs in the Projects for the construction sector for the 12th plan were outlined.

- i. Tax regime
- ii. Environmental issues
- iii. Workers' Cess
- iv. Contract Conditions

- v. Self Regulation issues
- vi. Standard Operating Procedures (SOP)
- vii. Proper selection of Agency
- viii. Need to have credible Third Party Rating
- ix. Geo Study Tax (GST)
- x. Provident Fund
- xi. Enacting the uniform Construction Law

5.0 Good Practices Recommended

- While discussing the Provident Fund issues, members suggested to create a sub-trust for Construction industry under Provident Fund Department, which would look into –
 1. Refund process to workers
 2. Utilization of unclaimed fund for the welfare of the Workers.
- The reconstituted said Ministry should "REVIEW MONITOR" periodically & submit its reports regularly to the "PLANNING COMMISSION", "GOVT. OF INDIA & VARIOUS MINISTRIES", so that they can be acted upon
- It should act as a "WATCH DOG" on the total issue of "CONSTRUCTION & PROGRAMME IMPLEMENTATION".
- "CIDC, IS PART OF PLANNING COMMISSION" & the "NODAL AGENCY" for "CONSTRUCTION & ITS RELATED ISSUES".
- "CIDC" can augment the necessary resources & competence: to act as the "SECRETARIAT FOR THE SAID MINISTRY" & generate the reviews & reports from time to time.
- The Statutes of the Ministry of Construction, Government of Japan and the Ministry of National Development, Government of Singapore may be studied and relevant lessons could be learnt.
- Evaluation of contracting company based on technical and commercial capabilities with transparency.
- Monetary benefits / some concessions for an organization which follows environmental protection system / process during execution and operation stage.
- Provision for stringent assessment to avoid unreasonable / unworkable commercial bids. This can be implemented by providing benchmark values with maximum and minimum cap.

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6.0 Way Forward

- A "COMMON CONSTRUCTION LAW" should be "FORMULATED" & made "APPLICABLE FOR ALL OVER INDIA".
- "CONSTRUCTION & DEVELOPMENT DEFINITELY IMPACT ENVIRONMENT & CANNOT BE AVOIDED": therefore only minimization & mitigation can way carried out.
- A common Regulatory Authority with Technical/ Judicial/ Administrative Powers to implement.
- A singular taxation structure need to be devised.
- A harmonized construction law needs to be promulgated.
- A line Ministry for Construction be created or a Construction Regulatory.
- The above shortcomings cause enormous hurdles like clearances, time delays and cost overruns. Different bodies are involved in land acquisition, environmental clearance and other relevant statutory clearances required before taking up the execution, hence, it is required to have an independent empowered body which can interact with different agencies and obtain clearances without the involvement of construction organization.
- CIDC under the auspices of the Planning Commission, should organize a National discussion where CBDT, Central Excise, Ministry of Law are invited to take onward action.
- The government agency which promotes infra projects must have all powers to clear under single window system.