

राष्ट्रीय राजमार्ग एवं अवसंरचना विकास निगम लिमिटेड

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार  
तीसरी मंजिल, पीटीआई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110001

National Highways & Infrastructure Development Corporation Limited

Ministry of Road Transport & Highways, Govt. of India  
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(भारत सरकार का उद्यम)

(A Government of India Enterprise)

NHIDCL/Nalupani-Bareti/AE/2017/1677

Date: 14.11.2022

To

M/s Magot Engineering Consultants Pvt. Ltd.  
Magot House, Opp. 9th Cross Tapovan Enclave  
Nalapani Road, Dehradun-248008

**Sub:-** Declaring M/s Magot Engineering Consultants Pvt. Ltd. as Non Performer in National Highways and centrally sponsored road projects.

Sir,

1. National Highways & Infrastructure Development Corporation Limited (hereinafter referred as "NHIDCL or Authority ") and M/s Magot Engineering Consultants Pvt. Ltd. (hereinafter referred as "Consultants") signed the Contract Agreement on the 28th day of November, 2018 for the work of "Consultancy Services for Authority's Engineer for (i) Protection works at Nalupani Landslide Zone (Ex. Km 123+080 to km 123+480, Km 123+665 to Km 123+740 and Km 123+770 to Km 123+970) section of NH-34 in the State of Uttarakhand on EPC Mode; and (ii) Construction of Road, Bridge and slope protection works of landslide at Bareti (Ex. Km. 100.300 to Km 101.060) section of NH-34 in the State of Uttarakhand on EPC Mode" at the Contract price of Rs. 2,14,15,680/- (Rupees Two Crore Fourteen Lacs Fifteen Thousand Six Hundred and Eighty only), with Consultancy period of 72 months and the commencement from one month after signing of the Contract Agreement i.e., 28.12.2018, on the terms, condition and covenants contained in the Contract Agreement.

2. Whereas, the Authority's Engineer will discharge its obligations as per provisions of the Contract Agreement and will ensure Compliance of Clause 10 of 'Terms of Reference' ("TOR").

3. Whereas, Authority's Engineer has been found to be lacking in technical supervision of work at site, which has been pointed out by the Authority from time to time.

4. Whereas, as per Clause 3.2(d) and Clause 3.5 of "TOR" of the Contract Agreement, the Consultant failed to perform its duties and never intimated Authority of the deviation of scope of work of Nailed Gabion, Catch Water Drain item of work in approved design & drawings from Schedule-B of the EPC Contract Agreement of Bareti Landslide project which may create financial liabilities to the Authority, further the Consultant failed to aid and advice the Authority on Change of Scope under Article-13.

5. Whereas, the Consultant failed to discharge its duties in accordance with Clause 10 of "TOR" of the Contract Agreement, which states that the Authority's Engineer shall be

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expected to fully comply with all the provisions of the 'Terms of Reference', and shall be fully responsible for supervising the designs, construction and maintenance and operation of the facility takes place in accordance with the provisions of the EPC Agreement and other schedules.

6. Whereas, the Consultant failed to discharge its obligations as per Clause 3.1, 4.7, and 9.5 of "TOR" of the Contract Agreement due to negligence in performing duties and misrepresentation of facts and delay in submission of descoping and issuance of Completion Certificate proposal.

7. Now, it is quite apparent and certain that, underneath the above-mentioned circumstances, the Consultant has failed to perform the duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice. The Authority's Engineer has caused the breach of the following clauses of GCC & "TOR" of the Consultancy Services Agreement as well as the duties and responsibilities for AE enshrined in the EPC Contract. The defaults are as follows:-

a) In accordance with Clause 3.2(d) of "TOR" of the Contract Agreement, the Consultants failed to perform its duties and never intimated Authority of the deviation of scope of work of Nailed Gabion, Catch Water Drain item of work in approved design & drawings from Schedule-B of the EPC Contract Agreement. The Consultant also had not mentioned the correct scope of RCC Cladding and RCC jacketing wall in the punch list while recommending for completion certificate proposal which may had created financial liabilities on either party for a sum exceeding Rs.50,00,000 (Rs. Fifty lakhs).

b) In accordance with Clause 3.5 of "TOR" of the Contract Agreement, the Consultants failed to aid and advise the Authority on Change of Scope proposal which caused unnecessary delay in submission of CoS/ descoped proposal and Issuance of Completion Certificate.

8. Whereas, the Consultant has been non-performing on the following reasons, as per MoRT&H Circular No. RW/NH-33044/76/2021-S&R (P&B), dated 07.10.2021:-

a) 3.1 (b):- Failure to issue follow-up notices to contractor/ concessionaire for delays in closure of NCRs, delays in furnishing detail of time & cost claims/COS/ revised work programmes/ work methodologies, etc.

b) 3.2(b):- Failure to detect deficiency in quantity executed vis-à-vis design having substantial financial implication (1% of civil work cost or more);

c) 3.2 (d):- Delay in processing EOT/COS proposals, inaccurate assessment of COS proposals, not issuing NCRs, delays/ improper review of designs/ drawings/ work programme or failure to submit Completion/ Provisional Completion Certification as prescribed in contract;

d) 3.3(d):- Failure to propose action (like cure period notice, levy of damages, etc.) on contractor/ concessionaire as per contract agreement for their default/ poor progress having material adverse effect on the project implementation in



terms of cost (1% of civil work cost or more) and/time (5% of project completion period or more);

e) 3.3 (e):- Improper/ wrong interpretation of provision in contract agreement or wrong certification of payment/ COS value/cost & time claims;

9. Therefore, in view of the foregoing, it is clearly evident that the Consultancy Firm has failed to uphold its contractual obligations as per the provisions of the Contract Agreement and also failed to provide the technical services which has caused detrimental effect on the projects under its supervision.

10. Whereas, the Authority is declaring the Authority's Engineer, M/s Magot Engineering Consultancy Pvt. Ltd. as 'Non-performer'. "Upon Declaration of non-performer, the AE/IE/CSE/PMC will not be able to participate in any bid for National Highways Projects with MoRT&H or any other executing agencies till such time the Non-Performer persists or the AE/IE/CSC/PMC is removed from the list of non-performers. The AE/IE/CSE/PMC shall include its JV partners, promoters etc. whose credentials were considered while qualifying them for the project".

11. This issues with the approval of the Competent Authority.

(M. Riten Kumar Singh)  
Executive Director (T)

Copy for kind information to:

1. The Director General (RD) & SS, MoRT&H.
2. The Director General (Border Roads), New Delhi.
3. The Chairman, NHAI, Delhi.
4. The Chief Secretaries (PWD/Roads) of all State Govt./UT with National Highways and Centrally Sponsored Schemes.
5. The Chief Engineers (PWD/Roads) of all State Govt./UT with National Highways and Centrally Sponsored Schemes.
6. PS to MD, NHIDCL/ PS to Director (Tech), NHIDCL
7. All ED(T/P)s, NHIDCL.
8. General Manager(IT), NHIDCL-HQ, New Delhi - (with a request to put the notice on the website).