

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
3rd Floor, PTI Building, 4-Parliament Street, New Delhi-110001, +91 11 23461600, www.nhidcl.com



(भारत सरकार का उद्यम)

(A Government of India Enterprise)

NHIDCL/AE/R-J/2018 11765

Date: 16/01/2023

To

M/s Highway Engineering Consultant
in Association with M/s LTelford Consulting Engineer Pvt. Ltd.,
JM-89/3C, Behind Panchwati Market, Saket Nagar,
Bhopal, Madhya Pradesh.

Sub:- Declaring M/s Highway Engineering Consultant in Association with M/s LTelford Consulting Engineer 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 Highway Engineering Consultant in Association with M/s LTelford Consulting Engineer Pvt. Ltd. (hereinafter referred as "Consultants") signed the Contract Agreement on the 18th day of December, 2018 for the work of "Consultancy Services for Authority's Engineer for (i) Construction and Up-gradation to 2-lane with paved shoulder from Km. 368.00 to Km. 399.00 of Lameri to Karanprayag of NH-07 on EPC mode, (ii) Construction and Up-gradation to 2-lane with paved shoulder from Km. 399.00 to 430.000 of Karanprayag to Chamoli of NH-07 on EPC basis, (iii) Construction and Up-gradation to 2-lane with paved shoulder from Km. 430.000 to Km. 468.000 of Chamoli to Painsi of NH-07 on EPC basis, (iv) Construction and Up-gradation including specialized slope treatment of existing road from Km. 379+100 to Km. 380+275 (1.175 Km.) on Gholteer landslide on Nh-074 under Chardham Pariyojna on EPC basis and (v) Construction and up-gradation including specialized slope treatment for existing road from km 458.900 to km 459.475 of Patalganga landslide (Design km 456.200 to km 456.800) of NH-07 under Chardham Pariyojna on EPC basis" at the Contract price of Rs. 10,48,88,400/- (Rupees Ten Crore Forty Eight Lakh Eighty Eight Thousand Four Hundred only), with Consultancy period of 78 months and the commencement of service was after signing of the Contract Agreement i.e., 18.12.2018, 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, the Authority's Engineer has failed repetitively to take initiative to ensure the timely achievement of desired targets, which are being discussed during monthly review meetings.

Talwinder

4. Whereas, the Authority's Engineer has replaced more than 70% of key personnel during their assignment period, which signifies that the Authority's Engineer has failed time after time to operate, supervise and monitor the site effectively in accordance to Contract Provisions.

5. Whereas, Authority's Engineer has been found to be lacking in technical supervision of work at site, due to absence of Key Personnel and sub-Key personnel from site. The Team Leader of Authority's Engineer is absent from site since 15.10.2021. Geotechnical Engineer has not been deployed since more than 02 years and Assistant Geotechnical Engineer has been disengaged. No sub-key professional staffs i.e. Surveyor and Lab technician are present at site since last two months. This clearly suggest that the Consultant has not given due diligence in ensuring a stable manpower at site and this negligence is solely attributable on the part of the consultant, which has hindered an effective supervision of the civil works and ultimately has affected in execution of the project.

6. Whereas, the non-availability of the key personnels of Authority's Engineer at site has persuaded in absence of strict monitoring of civil works at site and this may have also encouraged non-accountability of the executed works during the absence of key personnels at site. It is noticed that although notices are being issued by Authority's Engineer to the civil contractors for deficient work, however no effective actions are being taken, neither the Authority's Engineer have assisted the Authority for taking suitable actions in accordance to Contract provisions.

7. Whereas, as per Clause 3 and 4 of "TOR" of the Contract Agreement, the Consultant has failed to perform its duties in an efficient manner.

8. 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 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.

9. Whereas, the Consultant failed to discharge its obligations as per Clause 4.5 of "GCC" of the Contract Agreement due to negligence in performing duties and maintaining a stable manpower of key personnel and sub professionals at site for effective supervision of civil work.

10. Whereas, the Consultant has failed to perform its reporting obligation to the Client in accordance to Clause 3.8 of "GCC" of the Contract Agreement.

11. Authority had accordingly issued Show Cause Notice to the Authority's Engineer vide letter no NHIDCL/RO-DDN/AE/HEC/CORR/A-7/2020-21/2643 dated 15.10.2022 for declaring the firm as "Non- Performer" and allowing 15 days time for submitting written explanation. Whereas, response was received from Authority's Engineer after a lapse of 15 days vide their letter no. HEC-LTCIPL/NHIDCL/Chardham/2022-23/671 dated 04.11.2022. The explanation submitted by the Authority's Engineer does not justify the

Elum

fact that the Authority's Engineer has failed to discharge its duties in accordance with the requirement stipulated in the Contract Agreement. Following parawise comments are made w.r.t. the justification provided by the Authority's Engineer vide letter no. HEC-LTCIPL/NHIDCL/Chardham/2022-23/671 dated 04.11.2022:

(i) Reference to para 1.(i) of Authority's Engineer letter dated 04.11.2022: It is a matter of fact.

(ii) Reference to para 1.(ii) of Authority's Engineer letter dated 04.11.2022: The proposal of Extension of Time of Pkg-1, Pkg-2 and Pkg-3 along NH-07 was processed suo moto by the Authority keeping in account of the stoppage of hill cutting works due to Hon'ble Supreme Court Order dated 08.09.2020. No effective action was initiated by the Authority's Engineer and they have failed to perform in accordance to Clause 4.14 of the "TOR" of the Contract Agreement.

(iii) Reference to para 1.(iii) of Authority's Engineer letter dated 04.11.2022: It is a matter of fact.

(iv) Reference to para 1.(iv) of Authority's Engineer letter dated 04.11.2022: The replacements of personnel was done on the request of Authority's Engineer, for the reasons solely attributable to the Authority's Engineer. Authority had never asked for replacing Geotechnical Engineer as Team Leader, however suitable replacement of Team Leader was sought by NHIDCL due to reasons mentioned in Authority's letter no. 2550 dated 03.12.2019. Further, deployment schedule has been also changed based on the request of the Authority's Engineer.

(v) Reference to para 1.(v) of Authority's Engineer letter dated 04.11.2022: As per the available records, Authority's Engineer has failed to review the progress of work in accordance to the approved work programme of the contractor, nor they have assisted the Authority for taking suitable action in accordance to the Contract provisions. This clearly suggests that the Authority's Engineer has failed to perform their duties in an effective manner, inspite of repeated notices and requests from the Authority such as ED(P) Tour Notes dated 01.10.2022, 21.02.2022, 24.06.2021, 27.01.2021 and NHIDCL RO-DDN letter no. 1583 dated 11.10.2021, 1669 dated 12.11.2021, 1709 dated 26.11.2021, 1798 dated 30.12.2021, 2437 dated 03.08.2022 and 2643 dated 15.10.2022 etc.

(vi) Reference to para 1.(vi) of Authority's Engineer letter dated 04.11.2022: As mentioned in para (iv) above, the replacements of personnel was done for the reasons solely attributable to the Authority's Engineer. Further, the deployment scheduled of AE's personnel was modified based on the request of the Authority's Engineer.

(vii) Reference to para 1.(vii) and 1.(viii) of Authority's Engineer letter dated 04.11.2022: It was obligation to the Authority's Engineer to deploy their full team till any instruction is received from Authority to demobilize any key personnel. However, no contribution was made by the Authority's Engineer in the interest of the project during the Pandemic period and the work was going on during this period solely due to the efforts put up by the Authority.

(viii) Reference to para 1.(ix) of Authority's Engineer letter dated 04.11.2022: The Authority's Engineer was earlier placed in the Negative List of the Authority due to their poor performance. Although, the Authority's Engineer was removed from the Negative

R. K. Singh

List, but the Authority's Engineer has failed to rectify its deficiencies and maintain a stable manpower at site, inspite of repeated requests and notices issued by the Authority.

(ix) Reference to para 1.(x) of Authority's Engineer letter dated 04.11.2022: It has been noticed that NCRs issued by the Authority's Engineer are still pending to be resolved/closed. Although, notices were issued by the Authority's Engineer to the contractor, however no effective action has been taken up the Authority's Engineer towards the non-compliance of the Contractor, nor they have assisted the Authority to take suitable action in accordance to the contract provisions.

(x) Reference to para 2. of Authority's Engineer letter dated 04.11.2022: Since long time, the contractors are working at their usual competencies and are lacking behind in expediting the progress of work. Authority's Engineer has been simply forwarding SPS/IPS to Authority for approval, however no proper supervision of work has been carried out at site due to absence of stable manpower of Authority's Engineer, which may result in the poor quality of ongoing work.

(xi) Reference to para 3. of Authority's Engineer letter dated 04.11.2022: The contention of the Authority's Engineer is rejected strongly, as such the Authority's Engineer has failed continuously in performing its obligations in an effective manner. The design and drawing of protection wall at Ch 419+900 has not been finalized by the Authority's Engineer inspite of a lapse of more than 4 months, which is unacceptable in accordance to Clause 4 under Section 6 of "TOR" of the Contract Agreement. Authority's Engineer is simply forwarding the SPS/IPC of the Contractor without performing strict monitoring and supervision of the executed work, as such poor quality of ongoing work has been observed by the Authority during inspections. Authority's Engineer has failed in maintaining a stable manpower at site, whose absence has hindered effective supervision of civil works. Authority's Engineer has also tried to dissolve its duties by way of issuing letters to the contractor, without taking any effective actions as per the contractor. The NCRs issued by the Authority's Engineer are yet to be closed and no actions has been taken by the Authority's Engineer, signifying that no due diligence has been carried out by the Authority's Engineer to perform as per contract provisions. Frequent absence of staff including Team Leader of Authority's Engineer for the reasons solely attributable to Authority's Engineer, is unacceptable and hence the firm has failed completely to operate, supervise and monitor the site in accordance to Good Industry Practices as stipulated in the Contract Agreement.

(xii) Reference to para 4. of Authority's Engineer letter dated 04.11.2022: Authority's Engineer has continuously failed to fulfill his obligation, for reasons solely attributable to the Authority's Engineer. Various Show Cause Notices/letters have been issued to the Authority's Engineer for improving their performance at site. Poor monitoring, documentation and non-preparation of periodic reports have been observed by the Authority. Recommendation of Authority's Engineer for releasing of the retention money to the contractor, which has been already released is also evident itself regarding the lackadaisical approach of the Authority's Engineer.

(xiii) Reference to para 5 and 6 of Authority's Engineer letter dated 04.11.2022: The present services of Authority's Engineer has been below par w.r.t. the requirement as set forth in the Contract Agreement, and based on earlier performances of Authority's Engineer, the ineffectiveness of their services at current period cannot be accepted by the Authority.

Blum

12. Keeping in view of the above reasons, it is apparent that the Consultant has failed in performing its obligations as per the Contract Agreement, and the deficiencies are as under:

- (a) Failed to detect design/ quality deficiencies in key components of structures.
- (b) Failed to detect deficiencies and delay in reviewing design of structural components.
- (c) Failure to initiate/propose actions against the contractor as per Contract provisions.
- (d) Failure to deploy adequate and stable manpower at site for proper supervision of works.
- (e) Failure to comply with the maintenance requirement required during the construction period.
- (f) Failure to provide assistance/guidance to ground staff and failure to monitor the works of the contractor by way of doing frequent site visits.

13. Whereas, the Authority's Engineer 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) Sl. No. 3(b) : "Failure to detect design/ quality deficiency in key component having substantial cost (1% of civil work cost or more) and/or time implication (5% of project completion period or more)"
- (b) Sl. No. 3(c) : "Failure to detect deficiency/ not reviewing design (including temporary works) and construction (including methodology) of structural components of flyover/bridges/underpass/overpasses/ROB/RUB etc."
- (c) Sl. No. 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

14. However, it is clearly evident that the Authority Engineer has failed to uphold its contractual obligations as per the Contract Agreement and also failed to provide the technical services which has caused detrimental effect on the projects under its supervision.

15. In light of the aforesaid facts and circumstances, considering the non-professional attitude of M/s Highway Engineering Consultant in Association with M/s LTelford Consulting Engineer Pvt. Ltd. and aforesaid contractual defaults, breaches, and willful non-performance in fulfillment of Authority Engineer obligations as per the provisions of the Contract Agreements and blaming the Authority for its own accountabilities, the National Highways & Infrastructure Development Corporation Limited is hereby declaring the Authority Engineer M/s Highway Engineering Consultant in Association with M/s LTelford Consulting Engineer Pvt. Ltd. as Non- Performer in National Highways and

Reliance

centrally sponsored road projects as per MoRT&H Circular No. RW/NH-33044/76/2021-S&R (P&B), dated 07.10.2021.

16. Whereas, the Authority is declaring the Authority's Engineer, M/s Highway Engineering Consultant in Association with M/s LTelford Consulting Engineer Pvt. Ltd. as 'Non-performer' and as para -9 of MoRTH circular dated 07.10.2021. "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".

17. The Authority's Engineer may request to the Authority for removal of their name from the list of "Non-performers", however such request must be made only after a lapse of a period of 06 months from the date of issuance of this "Non-performer" order, until which no representation to the Authority shall be allowed whatsoever.

18. This letter is issued without prejudice to any other right or remedy available to the Authority under the Contract Agreement and/or applicable law.

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

Riten Singh
16/01/2023
(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
7. PS to Director (Tech), NHIDCL/ PS to Director (A&F), NHIDCL
8. All ED(T/P)s, NHIDCL.
9. General Manager(IT), NHIDCL-HQ, New Delhi - (with a request to put the notice on the website).