

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

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(भारत सरकार का उद्यम)

(A Government of India Enterprise)

OFFICE ORDER

NHIDCL/AE/R-J/2018/ 1879

Date: 06/04/2023

Name of the work: Consultancy Service for supervision work of:

- (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.
- (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.

Sub: Declaration of Authority's Engineer M/s Highway Engineering Consultant in Association with M/s LTelford Consulting Engineer Pvt. Ltd. as "Non-Performer" -reg

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 "Consultant") 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 (seventy eight) months and the commencement of service was after

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signing of the Contract Agreement i.e., 18.12.2018, on the terms, condition and covenants contained in the Contract Agreement.

2. Whereas, NHIDCL had declared the Consultant firm as 'Non-Performer' vide letter no. NHIDCL/AE/R-J/2018/1765 dated 16.01.2023 based on the Show Cause Notice issued by NHIDCL, RO-Dehradun vide letter dated NHIDCL/RO-DDN/AE/HEC/CORR/A-7/20-21/2643 dated 15.10.2022 and the response received from the Consultant vide their letter No. HEC-LTCIPL/NHIDCL/Chardham/2022-23/671 dated 04.11.2022. The deficiencies observed on the part of the Consultant in accordance to MoRTH Circular No. RW/NH-33044/76/2021-S&R(P&B) dated 07.10.2021 are as under:

Para 3, 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)"

Para 3, 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."

Para 3, 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 completion period or more)."

3. Whereas, a Writ Petition was filed by the Consultant before the Hon'ble High Court of Delhi, challenging the Non-performer Order issued by NHIDCL vide letter No. NHIDCL/AE/R-J/2018/1765 dated 16.01.2023.

4. Whereas, by way of Order dated 07.02.2023, the Hon'ble Court passed the following direction: -

'a personal hearing shall be granted to the Petitioner to explain its position. After hearing the Petitioner, a reasoned order shall be passed within a period of 2 months from today i.e. 07.02.2023. The impugned order dated 16th January, 2023 is, accordingly, set aside only on this sole ground, leaving all the issues on merits open to be dealt with by the Petitioner during the course of personal hearing.'

5. Whereas, in view of the directions given by Hon'ble High Court of Delhi vide Order dated 07.02.2023, a personal hearing was offered to the Petitioner (i.e. M/s Highway Engineering Consultant) vide NHIDCL HQ letter no. NHIDCL/Legal/HEC/W.P.(C)/DHC/2023/1829 dated 21.02.2023, to explain his position w.r.t. declaration of their firm as 'Non-performer', which was scheduled on 24.02.2023 at 4:00 PM at NHIDCL HQ, New Delhi.

6. Whereas, the Consultant firm vide letter no. HEC/ED(T)/NHIDCL/2022-23/2849 dated 22.02.2023 had requested to postpone the date of personal hearing to a suitable date by 03 weeks from scheduled date i.e. 24.02.2023, owing to deteriorated health condition of Sh. S.N Malviya (partner of AE's firm). Further, the consultant vide letter no. HEC/ED(T)/NHIDCL/Chardham/2022-23/2869 dated 24.02.2023 requested to provide any suitable date after 15.03.2023 for personal hearing, so that they can present their case through verbal and written submission before the Authority. Accordingly, the personal hearing was

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rescheduled on 16.03.2023 at 4:00 PM, which was communicated to the consultant vide NHIDCL HQ letter no. NHIDCL/Legal/HEC/W.P.(C)/DHC/2023/1841 dated 28.02.2023.

7. Whereas, the personal hearing was held on 16.03.2023 and was attended by Sh. L.N. Malviya and Sh. Avneesh Bajaj on behalf of the Consultant Firm. During the course of the hearing, the consultant firm informed that they had some internal problem in their Organization, due to which they could not fulfil the manpower requirement at site, however presently they have deployed sufficient workforce at site and they have also submitted the CVs for replacement of Key Personnels, so that work does not remain hampered. They have also informed that the TL of the project highway has also re-joined his assignment, who had earlier left site in the Month of Oct'22.

8. Whereas, the submission of the Consultant firm was examined as per the factual information received from NHIDCL, RO-Dehradun, and following points are observed:

(a) Team Leader of the project who had left site on 15.10.2022, had rejoined the assignment on 02.02.2023. Similarly, the Material Engineer has left the site on 26.12.2022 and again rejoined at site on 08.02.2023. The absence of adequate manpower at site has affected the supervision of works and this has also resulted in the non-accountability of executed works during the absence of Key Personnels at site. The month-wise availability of Key Personnel from Oct'22 to Feb'23 is as under:

Sl. No.	Month	Personnel present at site		Absence (in days) of important key personnels			
		Key- Personnel (total personnel as per contract is 7 numbers)	Sub- Professional Staff (total personnel as per contract is 8 numbers)	Team Leader	Resident Engineer	Material Engineer	Bridge Engineer
1	Oct-22	3	1	27	31	8	11
2	Nov-22	2	1	30	30	0	17
3	Dec-22	1	3	31	31	8	31
4	Jan-23	0	3	31	31	31	31
5	Feb-23	3	3	1	0	7	28

(b) Improper supervision by the Consultant had resulted in poor quality and workmanship in the execution of work of construction of Wall at km. 464.750. Further, AE was directed vide NHIDCL, PMU-Chamoli letter No. NHIDCL/PMU-Chamoli/HEC/2022-23/D-5741 dated 04.01.2023 to submit the estimate of re-construction of RCC wall at km 419+900, however, the same has not been complied by the Consultant till now.

(c) AE was directed to finalize the proposal w.r.t. the work to be done by the EPC Contractor, the work which is not feasible to do at site & the work which needs to be descoped for the section of the Karnprayag and Nandprayag town. However, no action has been taken by Authority's Engineer till now. The delay on the part of AE to process such crucial proposals/communicate site information to the Authority has resulted in further affecting the completion of the subject projects.

9. Whereas, the Consultant vide their letter no. HEC/NHIDCL/Chardham/2022-23/3066 dated 17.03.2023 had submitted the deployment chart and requested for revoking the letter of declaring their firm as 'Non-Performer'. Following facts are worth mentioning w.r.t. the request/justification provided by the AE firm for removing their name from the List of 'Non Performer':

(i) AE has mentioned that the delay in execution of the project work has been caused by Force Majeure events or delay on the part of the Authority/Contractor. Further, they had denied the allegation that the absence of adequate manpower has hindered effective supervision of civil works, as such NCRs were issued to the Contractor for poor quality of work. However, the mere issuance of NCRs does not justify the fact that the AE personnel had remained absent from site, which has resulted in execution of poor quality of work by the EPC Contractors. Further, no action has been initiated by AE for non-compliance on the part of the Contractor, as such around 28 NCRs are still pending/opened as on date (some NCRs dates back to 2021). Hence, AE has failed to propose action against the EPC Contractor as per Contract Agreement for such quality deficiencies, which has also affected the completion of the project.

(ii) AE has themselves accepted the fact that Team Leader and other Key Personnel were not present at the site due to illness or other unavoidable circumstances. This itself clarifies the argument that whether AE has fulfilled their duties as per Contract Agreement. AE has also mentioned that the Authorized Signatory Sh. Avneesh Bajaj along with Bridge Engineer and Contract Specialist remained present at site during the absence of Team Leader and other Key Personnel, however this situation of compromise arising due to shortage of manpower is not allowable as per the provisions of the Contract Agreement, neither does it serves the purpose and duty of Authority's Engineer, which is required as per the Contract Agreement. The actual deployment of Key Personnel and sub-professionals at site is represented under the table of para 8(a), which clearly shows that majority of the work force remained absent during the crucial working season from Oct'22 to Jan'23, which is not at all acceptable.

(iii) AE has also argued that the clauses mentioned in MORTH Circular RW/NH-33044/76/2021-S&R(P&B) dated 07.10.2021 cannot be imposed as these are drawn after the date of the Consultancy Agreement, and since there being different clauses for the same cause of action these conditions vide this circular RW/NH-33044/76/2021-S&R(P&B) dated 07.10.2021 cannot be imposed on the consultant. In this regard it is to mention that, the MoRTH Circular is used as a mechanism to impose action against a non-performing consultant, so that necessary rectification can be done and such actions does not get repeated by the consultant, while the contract is being kept alive. The Consultant has themselves accepted the fact that they had been asked to mobilize the staff and carry out necessary replacement of the personnels, which signify that this action of declaring their firm as Non-performer was taken against the Consultant to ensure that such deficiencies/defaults does not occur in future while supervising the subject consultancy work, and it should not be misinterpreted as termination/closure of the work, which is provisioned in the consultancy agreement. However, it is also noteworthy to mention that more than 66% of replacement has been carried out by the AE, which invites action viz.a.viz. debarment of the AE firm upto 02 years as per Clause 4.5(c)(iv) of the General Conditions of the Contract (GCC) of the RFP, which reads **"For total replacements beyond 66%**

of the key personnel the client shall initiate action of higher penalty/termination/debarment upto 2 years as considered appropriate.” Hence, the Authority for the aforesaid reason reserves its right to take action including debarment of the Consultant firm from participating in centrally sponsored projects upto a period of 02 years, as envisaged in the provisions of the Contract Agreement, which is in line with the present action initiated against the Consultant viz.a.viz declaring the firm as ‘Non-Performer’, on similar grounds.

10. Whereas, the Consultant vide letter no. HEC/NHIDCL/Chardham/2022-23/3066 dated 17.03.2023 had also requested for allowing them 5 more minutes of personal hearing to discuss the submissions made through their aforementioned letter. Whereas, the Authority had duly provided the Consultant firm with sufficient time and fair opportunity to submit their documents/submission and the date of personal hearing was postponed and rescheduled from 24.02.2023 to 16.03.2023 based on the request received from the Consultant vide their letter no. HEC/ED(T)/NHIDCL/Chardham/2022-23/2869 dated 24.02.2023, wherein they have mentioned that, **“during proposed personal hearing, we shall be presenting our case through verbal as well as written submission. We shall be required to produce many more documents to support our verbal and written presentation before your goodself, which shall not be feasible if personal hearing is conducted through video conferring”**. The request of the Consultant to attend the personal hearing physically, instead of Video conferencing, was agreed by the Authority. In spite of providing a fair opportunity to represent their issues and grievances to the Authority in the personal hearing held on 16.03.2023, the Consultant vide their letter no. HEC/NHIDCL/Chardham/2022-23/3066 dated 17.03.2023 once again resorted to seek further additional time to discuss the issues, which should have been presented by the Consultant before the Authority on the date of personal hearing i.e. on 16.03.2023. Thus, the Authority vide email dated 03.04.2023 had again requested the Consultant to submit additional documents/submissions, if any, by 04.04.2023 (within 1800 Hrs) so that final decision w.r.t. declaration of the firm as Non-Performer can be taken.

11. Whereas, the Consultant vide their letter no. HEC/Consultant (Tech)/Chardham/2023-23/25 dated 04.04.2023 has again requested additional 07 days time to submit their documents to the Authority, citing that they are not in a position to submit their information within 04.04.2023.

12. Whereas, the Consultant is well aware of the fact that the Hon’ble High Court of Delhi has clearly specified that the decision w.r.t. declaration of their firm as Non-performer shall be taken by NHIDCL based upon the personal hearing offered to the Consultant, within a period of 02 months from 07.02.2024. As such, the Consultant has consistently tried to prolong the proceedings of personal hearing and now the Consultant has again sought additional 07 days time to submit their additional documents, which should have been presented by their firm during the personal hearing held on 16.03.2023 and for which they had sought only 05 minutes as additional time from the Competent Authority vide their letter no. HEC/NHIDCL/Chardham/2022-23/3066 dated 17.03.2023. Thus, the contention of the Consultant for providing them further additional time to submit documents/information/hearing is not allowed as it is found to align with the fulfilment of their

own interest and further derail the process of finalizing the decision of NHIDCL w.r.t the declaration of their firm as Non-performer.

13. Whereas the Competent Authority, during the personal hearing held on 16.03.2023, has noted all the necessary inputs and justifications submitted by the Consultant firm and accordingly it is found apparent that the Consultant firm was unable to maintain adequate and stable manpower at site during the crucial working season, for the reasons attributable to themselves, and the Consultant had himself accepted the fact that they could not fulfil the requirement of manpower as per contract provision, which is also reflected in their letter no. HEC/NHIDCL/Chardham/2022-23/3066 dated 17.03.2023. The deficiencies on the part of the Consultant cannot be left unaccounted for, as such absence of manpower in crucial Central Government Projects of National importance has long impending affects on the execution of the project. Opportunity was given to the applicant to present his point of view and evidence. They were present and were heard. No more time could be given. This order is being passed in view of the Hon'ble High Court's direction to pass a speaking order by 06.04.2023.

14. In view of the above deficiencies, it is evident that the Authority's Engineer firm had failed his contractual obligations w.r.t. deploy adequate and stable manpower at site, detecting design deficiencies, initiating action against the contractor as per contract provisions, failure to process/ communicate important proposals to the Authority for further decision and so on. The failure to provide technical services upholding the contractual obligations has proved detrimental to the project at large, as such majority of the Key Personnels (including the Team Leader) of Authority's Engineer had remained absent during crucial working season from Oct'22 to Jan'23, and the project was left unguarded/unattended causing irreparable loss to the interest of the stakeholders.

15. Whereas, the Consultant firm during the personal hearing held on 16.03.2023 had assured that all deficiencies related to the execution of work shall be fulfilled as per the contract provisions, however the non-performance and breaches on the part of the Authority's Engineer in the past cannot be ignored, as such the works undertaken by the Authority's Engineer are part of Chardham Pariyojana, which is of National importance connecting the important pilgrimage sites and strategic locations of the country. Hence, the National Highways & Infrastructure Development Corporation Limited holds the Consultant firm accountable for Non-Performance and is hereby declaring the Consultant firm M/s Highway Engineering Consultant in Association with M/s LTelford Consulting Engineer Pvt. Ltd. as Non- Performer **for a period of 01 (one) year** in National Highways and centrally sponsored road projects as per MoRT&H Circular No. RW/NH-33044/76/2021-S&R (P&B), dated 07.10.2021.

16. While declaring the Authority's Engineer, M/s Highway Engineering Consultant in Association with M/s LTelford Consulting Engineer Pvt. Ltd. as 'Non-performer', the Authority's Engineer is hereby directed to rectify any pending deficiencies and take adequate measures not to repeat such instances in future.

17. Whereas, the Authority is declaring the Authority's Engineer as 'Non-performer' as para -9 of MoRTH Circular dated 07.10.2021 i.e. **"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”.

18. This Order is based on Personal Hearing held on 16.03.2023 in compliance to the directions received from Hon'ble High Court of Delhi vide judgement dated 07.02.2023 and the present Performance of the Authority Engineer at project site.

19. 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).