

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)

F. No NHIDCL/A&N/NH-4/Package-III/Termination/2017/99

Dated: 30.11.2022

OFFICE ORDER

Subject: Declaring the EPC Contractor M/s Mantena Vasishta Strait (JV) as Non-Performer-reg.

NHIDCL (National Highways & Infrastructure Development Construction Limited) and M/s Mantena Vasishta Strait (JV) (Hereinafter referred to as "the EPC Contractor") signed an EPC Agreement on the 26th March, 2018 for the work of "Rehabilitation and up-gradation of section from Km 107.760 to Km 129.445 (After Middle Strait to Humphrey), Km 130.600 to Km 138.00 (After Humphrey to Kadamtala) & Km 155.00 to Km 181.00 (End of Jarwa to Rangat) of NH-4 (Total Length: 54.71 Km) to 2-Lane with hard shoulder in the in the Union territory of Andaman & Nicobar Islands (Package-III)", with construction period of 24 (twenty four) months commencing from the Appointed Date w.e.f. the 4th September, 2018 on the terms, conditions and covenants contained in the Contract Agreement.

2. As per Clause 10.3.1 of EPC Contract Agreement, the Contractor shall construct the Project Highway as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D and in accordance with the Schedule set forth in Schedule-J. The 730th day (Seven Hundred and Thirtieth day) from the Appointed Date (i.e. the 3rd September 2020) shall be the scheduled completion date (the "Scheduled Completion Date") and accordingly the Milestones date falls on along with targeted financial progress (%) as per Schedule-J are furnished below:

Sr. No	Milestone	Date of Milestone as per CA	Revised date of Milestones as per EoT-01	Revised Date of Milestone as per EoT-02	Achieved date
1.	Milestone-1 (10%)	02.01.2019	18.07.2020 (Achieved date)	18.07.2020 (Achieved date)	18.07.2020 (Achieved)
2.	Milestone-II (35%)	31.07.2019	10.10.2021 (Revised date)	01.12.2021 (Revised date)	01.12.2021 (Achieved)
3.	Milestone-III (60%)	26.02.2020	15.11.2021 (Revised date)	25.01.2022 (Revised date)	Failed
4.	Scheduled Completion date (100%)	03.09.2020	31.12.2021 (Revised date)	19.03.2022 (Revised date)	Failed

3.WHEREAS, the progress of work has been dismal since start of the project and the Contractor has been able to achieve physical progress of 51.30% only as on 25.11.2022, against desired progress as per mile stones fixed in Schedule-J of Contract Agreement, despite several Notices by Authority's Engineer and Authority.

4. WHEREAS, EPC Contractor has failed to achieve the progress as per its work program as detailed below due to slow procurement of major construction materials, lack of skilled & unskilled workforce, lack of meticulous planning in connection to procurement of construction materials and other ancillary items, apathetic attitude to nonconformity with specifications and standards during execution of works leading to redoing of works and casual approach towards executing the project despite various reminders causing cost and time overrun, in complete disregard to the strategic importance of the project.

Physical and Financial Progress of PKG-III		
Month	Physical Progress	Financial Progress
Aug-20	13.75%	11.12%
Sep-20	13.75%	12.91%
Oct-20	14.41%	12.91%
Nov-20	16.48%	14.89%
Dec-20	18.30%	14.89%
Jan-21	23.10%	16.95%
Feb-21	25.46%	18.97%
Mar-21	30.59%	25.11%
Apr-21	33.48%	25.11%
May-21	36.33%	26.43%
Jun-21	38.77%	30.25%
Jul-21	38.79%	30.25%
Aug-21	33.00%	30.25%
Sep-21	33.00%	30.25%
Oct-21	33.60%	30.25%
Nov-21	34.49%	30.25%
Dec-21	36.43%	32.83%
Jan-22	43.50%	35.34%
Feb-22	44.46%	37.47%
Mar-22	46.85%	40.46%
Apr-22	50.03%	41.28%
May-22	51.02%	44.80%
Jun-22	51.02%	44.80%
July-22	51.02%	44.80%
August-22	51.26%	44.80%
Sept.22	51.30%	44.80%
Oct. 22	51.30%	44.80%
Upto 22.Nov.22	51.30%	44.80%

5. WHEREAS, the physical progress per month despite favorable weather conditions during the months of December, 2021 to November, 2022 indicating creeping rate of progress as below:

Month	Achieved Progress (Soil Stabilization)	Achieved Progress (BC)
December 2021	Nil	0.665 Km
January 2022	1.950 Km	3.615 Km
February 2022	1.205 Km	4.500 Km
March 2022	2.045 Km	1.600 Km
April 2022	1.750 Km	1.575 Km
May 2022	Nil	Nil
June 2022	Nil	0.400 Km
July 2022	Nil	Nil
August 2022	Nil	Nil
September 2022	Nil	Nil
October 2022	Nil	Nil
Upto 22 Nov.2022	Nil	Nil

6. Whereas, EPC Contractor was found to be in default in following aspects:

- i. *Failure to set up institutional mechanism and procedure as per contract.*
- ii. *Fails to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length/ ROW available even after lapse of 6 months from respective project/ Schedule Completion date, unless Extension of Time has been granted due to Authority's Default or Force Majeure.*
- iii. *Fails to achieve the target progress or complete the project as per schedule agreed at the time of sanctioning of funds under One Time Funds Infusion (OTFI) or relaxations to contract conditions to improve cash flow solely on account of concessionaire's failure/default.*
- iv. *Fails to start the work or cause delay to maintenance & repair/overlay of the project.*
- v. *Fails to complete rectification (excluding minor rectifications) as per time given in non-conformity reports (NCR) in design/completed works/maintenance or reported in Inspection Reports issued by Quality Inspectors deployed by the Authority or officers of the Authority.*
- vi. *Fails to complete minor rectifications exceeding 3 instances in a project not completed as per time given in non-conformity reports (NCR) in design/completed works/maintenance.*
- vii. *Failed to fulfill its obligations to maintain a highway in a satisfactory condition in spite of two rectification notices issued in this regard.*

7. WHEREAS, RO Port-Blair vide letter no. 268 dated 26.07.2022 issued a Show Cause Notice of intention to declare the EPC Contractor i.e., M/s Mantena Vasishta Strait (JV) as “Non-Performer”, in light of the provisions stipulated in MoRT&H Circular No. RW/NH-33044/76/2021-S&R(P&B) dated 06.10.2021 and applicable law of Contract Agreement by giving 15 days’ time to furnish its written explanation.

8. WHEREAS, EPC Contractor vide letter no. 185 dated 16.08.2022 has furnished their written explanation mentioning following reasons;

(a) non-handing over of the 90% ROW with respect Clause-8.2 and 8.3 of the Contract Agreement.

(b) pending approval of ROW from the forest department to the tune of 40.83% of the forest stretch.

(c) initiation of Change of Scope due to non availability of ROW approvals for both highways and structures.

(d) non allocation of stone quarries from 23.12.2020 to 09.03.2022 which has impacted the project hugely.

9. WHEREAS, AE vide letter no. YM-LMA/AE/A&N/2022/094 dated 29.08.2022 has recommended to put the Contractor in “No-Performer” list due the following reasons;

(i) the Contractor has failed to explain the shortage of other materials like Bitumen, Diesel, lack of qualified and unskilled experienced engineer skilled work force and lack of machineries at site.

(ii) the Contractor has not explained why they did not take the necessary preparations during the previous non-working season, so that they were ready to work during working season.

(iii) as per clause 13.1.3 of the Contract document, the contractor shall prepare the Change of Scope with relevant details and reduction in cost, as its own cost, for the Authority to consider such Change of Scope within 15 days. After repeated reminders, the contractor has failed to provide the proposed Change of Scope details and the cost implication till date. Hence this explanation for delay is void and invalid.

10. WHEREAS, ED(P), Port-Blair vide letter no.353 dated 05.09.2022 & 06.10.2022 has recommended to declare the EPC contractor, M/s Mantena Vasishta Strait (JV) and its JV partner M/s Mantena Constructions Pvt. Ltd. and M/s Vasishta Constructions Pvt. Ltd. as “Non-Performer” in light of the provisions stipulated in MoRT&H Circular No. RW/NH-33044/76/2021-S&R (P&B) dated 06.10.2021 & 04.01.2022 and applicable law of CA on grounds mentioned vide para 6 above.

11. WHEREAS, RO-Port Blair visited the site on 08.09.2022 and issued comprehensive letter on 24.09.2022 to arrange required amount of resources and manpower & maintain in traffic worthy conditions as per Clause 10.4.2, further reminded vide ‘Diligent Notice’ issued on 01.10.2022. However, no response has been received from Contractor and the Contractor has abandoned the site.

12. WHEREAS, Hon'ble High Court at Calcutta has remarked vide suo moto cognizance on 21.11.2022 that *"People of the area are struggling to find suitable means to carry patients by ambulance or by any other vehicular method for emergency treatment to a hospital at Port Blair. Supply trucks loaded with materials have been found to be toppled on the dirt tracks. Some regular bus services between Middle and North Andaman touching Baratang, Kadamtala, Rangat, Billiground, Bakultala, Mayabunder, Diglipur, among others, have been suspended by operators."*

13. WHEREAS, RO-Port Blair has undertaken the repairing the road to make it in traffic worthy condition vide appointing Separate Contractors at Contractor's Risk & Cost as per Clause 10.4.2 on 03.10.2022, 07.10.2022 and 28.10.2022 respectively.

14. WHEREAS, EPC Contractor, M/s Mantena Vasishta Strait (JV) have been found in default w.r.t. the Sub-Clause 3.1.1, 3.1.8 and 10.4.2 of the Contract Agreement.

15. WHEREAS, NHIDCL Regional Office has issued multiple Show Cause Notices, Slow Progress Notices, Non-performer Notices, Cure Period Notices to the appointed Contractor in accordance with Contract Agreement as per following details:

SL. No.	Package	Notice Details	Details
1.	Package III	NHIDCL/RO/A&N/107.76to129.445(Package-III)/ N23 /2020/ 482 dated 25.09.2020	Cure Notice Issued by RO Office to EPC Contractor
2.	Package III	NHIDCL/A&N/NH-4/Package-III/2017/750 dated 25.02.2021	Show cause notice for placing the EPC Contractor in the Negative List Issued by HQ NHIDCL to EPC Contractor
3.	Package- III	NHIDCL/RO/A&N/107.76to129.445(Package-III)/ N23 /2020/ 308 dated 14.09.2021	Cure Notice Issued by RO Office to EPC Contractor
4.	Package- III	NHIDCL/RO/A&N/107.76to129.445(Package-III)/ N23 /2020/ 574 dated 10.11.2022	Cure Notice Issued by RO Office to EPC Contractor

16. All the earlier letters/correspondence /notices issued by the Authority to the EPC Contractor for improving its performance may be referred as part and parcel of this order.

17. HOWEVER, in view of the aforesaid facts and circumstances, it is clearly evident that the EPC Contractor has failed to uphold its contractual obligations as per the Contract Agreement and has caused detrimental effect on the projects under it. In light of the aforesaid facts and circumstances, considering the non-professional attitude of **M/s Mantena Vasishta Strait (JV)**, and aforesaid contractual defaults, breaches, and willful non-performance in fulfillment of Contractor's obligations as per the provisions of the Contract Agreement and blaming the Authority for its own accountabilities, the National Highways & Infrastructure Development Corporation Limited is hereby declaring the EPC Contractor **M/s Mantena**

Vasishta Strait (JV) as “Non-Performer” in National Highways and centrally sponsored road projects as per MoRT&H Circular No. RW/NH-33044/76/2021-S&R (P&B), dated 06.10.2021.

18. The Authority is declaring the EPC Contractor, **M/s Mantena Vasishta Strait (JV)**, (jointly and severally) i.e. **M/s Mantena Construction Pvt. Ltd** and **M/s Vasishta Construction Pvt. Ltd.** as Non-Performer & as per Para-8 of MoRT&H Circular dated 06.10.2021. Upon Declaration of Non-Performer, the EPC Contractor will not be able to participate in any bid with MoRT&H or its executing agencies, till such time the EPC Contractor is removed from the list of Non-Performers.

19. This order is issued without prejudice to any other right or remedy available with the Authority under the Contract Agreement and applicable law.

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



(Rajendra Singh Yadav)
Executive Director (T)-IV
HQ, NHIDCL

Copy for kind information:

- i. PS to MD, NHIDCL, New Delhi
- ii. PS to Director (Tech), NHIDCL, New Delhi.
- iii. All ED (T/P), NHIDCL.
- iv. Sr. Manager (IT), NHIDCL-HQ, New Delhi - with a request to put the notice on the website and give wide publicity.