

F. No NHIDCL/Nagaland/D-K/BW/PKG3/2021/1306 Dated: 10<sup>th</sup> August, 2022

**OFFICE ORDER**

**Sub: Declaring the EPC Contractor M/s Oasis Projects Limited as Non-Performer**

NHIDCL (National Highways & Infrastructure Development Construction Limited) and M/s Oasis Projects Limited (Hereinafter referred to as "the EPC Contractor") signed an EPC Agreement on 30<sup>th</sup> July, 2021 for the work of **"Balance work for 4 laning of NH-39 Dimapur - Kohima Road from design km 152.490 to km 166.700 (Existing km 156.000 to km 172.900) in the state of Nagaland under SARDP-NE through an Engineering, Procurement and Construction (EPC) Contract"**, with construction period of 12 months commencing from the Appointed Date w.e.f. 1<sup>st</sup> Sept, 2021 on the terms, conditions and covenants contained in the Contract Agreement.

2. As per Clause 10.3.1 of EPC Contract Agreement, the EPC Contractor shall construct the Project Highway as specified in Schedule-B and Schedule-C, in conformity with the Specifications and standards set forth in Schedule-D, within 365 Days i.e., (31<sup>st</sup> Aug, 2022) from the Appointed Date (i.e., 1<sup>st</sup> Sept, 2021). The project milestones w.r.t. targeted financial progress (%) are as below:

| Sl. No. | Project Milestones   | Milestone from Appointed Date as per the Contract Agreement (in days) | Stipulated Completion Date as per the Contract Agreement | Achieved on                         | Stipulated Financial Progress as per Contract Agreement |
|---------|----------------------|---|--|-------------------------------------|---|
| i       | Milestone-I          | 128   | 06.01.2022   | 05.02.2022<br>(within grace period) | 10%   |
| ii      | Milestone-II         | 219   | 07.04.2022   | Not Achieved                        | 35%   |
| iii     | Milestone-III        | 310   | 07.07.2022   |                                     | 70%   |
| Iv      | Scheduled Completion | 365   | 31.08.2022   |                                     | 100%  |

3. The EPC contractor has failed to achieve the required progress for the reasons solely attributable to the EPC contractor, majorly due to delay in procurement of construction materials, lack of meticulous planning, failing to mobilize key construction equipment/manpower, regular breakdown/off road of plants due to old vintage and poor mechanical condition etc.

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4. The EPC Contractor has failed to achieve 2nd Mile Stone as per Schedule-J of Contract Agreement & submitted work programme due to poor planning, lack of adequate resources & slow progress of work.

5. As per clause 11.10 of the Contract Agreement, it is the obligation of EPC Contractor to ensure that the Construction materials and workmanship are in accordance with requirements specified in the Contract Agreement, specifications, standards and Good Industry Practice.

6. Authority and Authority's Engineer have issued several Cure notices for slow progress vide the letter dated 23.09.2021, 23.10.2021, 09.11.2021, 14.12.2021, 27.12.2021, 01.04.2022 & 26.04.2022 for expediting the progress of work wherein the EPC Contractor was advised to mobilize adequate manpower, machinery and ensure procurement of materials at site to achieve the Milestones targets. Despite repeated instructions issued in this regard, the EPC Contractor failed to take corrective steps for expediting the progress of work. Therefore, slow progress of the project is solely attributable to the EPC Contractor.

7. Authority and Authority's Engineer have issued several notices on construction of breast wall and to undertake suitable slope protection/stabilization works to avoid any untoward incident i.e., loss of life/properties vide letter dated 15.11.2021, 27.12.2021, 01.04.2022, 26.04.2022, 26.04.2022, 26.04.2022 02.05.2022 & 04.05.2022, however, the EPC Contractor has failed to comply with all the notices for the safety measures.

8. The month wise details of submitted work program (as per Sch-J), physical and financial progress achieved by M/s Oasis Projects Limited are tabulated as under:

| Sl. No. | Month        | As per submitted Work Program (%) | Physical Progress (achieved in %) | Financial Progress (achieved in %) |
|---------|--------------|-----------------------------------|-----------------------------------|------------------------------------|
| 4       | Upto Dec-21  | 8.833                             | 4.793                             | 4.210                              |
| 5       | Jan-22       | 12.904                            | 2.803                             | 0                                  |
| 6       | Feb-22       | 10.139                            | 4.351                             | 5.900                              |
| 7       | Mar-22       | 10.289                            | 7.686                             | 9.020                              |
| 8       | April-22     | 27.508                            | 1.810                             | 0                                  |
| 9       | May-22       | 13.298                            | 4.166                             | 5.000                              |
| 10      | June-22      | 9.669                             | 2.449                             | 0                                  |
|         | <b>Total</b> | <b>92.64</b>                      | <b>28.058</b>                     | <b>24.13</b>                       |

9. The NHIDCL/Authority has issued several letters on failure of submission of resource based work programme, design & drawing, plan & profile, launching

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methodology of steel bridge & design for sub-surface drain vide letter dated 06.05.2022 & 07.05.2022.

10. EPC Contractor has failed to start BC work after passing a period of 09 months and has failed to submit its design till date.

11. EPC Contractor has failed to adhere to the letters dated 04.05.2022 & 04.05.2022 for maintaining the road in traffic worthy condition during monsoon period for which daily commuters are facing inconvenience.

12. EPC Contractor has failed to adhere to the advisories issued by Authority & Authority's Engineer vide letter dated 06.01.2022 & 06.01.2022 to improve quality of works.

13. EPC contractor has not followed good industry practices which are inherent in the Contract Agreement and reflected in poor quality of work.

14. The facts of Omission and commission have resulted in immense inconveniences to the public since the said project is crucial as well as has strategic importance.

15. The EPC Contractor has neither submitted a realistic resource based work programme to complete the balance work nor any proper planning for procurement of construction materials, Machineries, and other ancillary items in order to complete the project in the specific period of time which has resulted in loss of valuable project time.

16. NHIDCL vide letter no. NHIDCL/PMU-Dim/NH-39D-K/BW/PKG-III/Vol-II/2022-23/97/3308, dated 12.05.2022 in accordance with the Circular No. RW/NH-33044/76/2021 S&R (P&B) dated 06.10.2021 issued Notice to the EPC Contractor for declaring it as Non-Performer due to slow progress and poor planning of work. Vide the notice dated 12.05.2022 the EPC contractor was informed the following breaches:

(i) Failed to mobilize key construction equipment within a period of 4 months from the Appointed Date.

(ii) Failed to set up institutional mechanism and procedure as per Contract.

(iii) Failed 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 milestone/Schedule Completion Date.

(iv) Failed to fulfill its obligations to maintain a highway in a satisfactory condition in spite of two rectification notices issued in this regard.

(v) Fails to start the works or causes delay in maintenance & repair/overlay of the project.

*RK Singh*

17. In response to Authority/NHIDCL letter dated 12.05.2022, the EPC Contractor/ M/s OASIS Projects Limited vide letter no. OASIS/D-K/205, dated 24.05.2022 has submitted its reply and requested the Authority not to declare it as Non-Performer. Vide the said reply, the EPC Contractor has alleged that work affected due to the reason of (i) Law & Order Issues, (ii) Un-Seasonal Rain (iii) Local Issues/ROW issues/illegal mining in ROW/Strikes by local union and (iv) Covid-19.

18. The reply of the EPC Contractor has been perused and examined. Upon perusal the reply dated 24.05.2022 received from the EPC Contractor is being rejected on the following grounds:

(i) With regard to Law & Order issues, it is stated that the issue raised by EPC Contractor is denied and incorrect and do not convey true picture of on going works at site. One (1) platoon of IR Bn. has been deployed at working site of Oasis Projects Limited. O.C of the jurisdiction is in regular contract with the officials of company, Highway Mobile of DEF Kohima has been stationed at Project site, and the EPC Contractor is well aware from this.

(ii) As regards to Unseasonal Rain, it is submitted that the EPC Contractor is well versed with local weather conditions, wherein EPC Contractor has been advised vide letter dated 06.05.2022 to take up appropriate works such as concreting works like breast wall, retaining wall, culverts, etc on rainy days. During dry spell of the year the progress of work was bare minimum which is evident from the notice dated 26.02.2022, 01.04.2022 & 26.04.2022 issued to the EPC Contractor for slow progress of work.

(iii) As regards local issues, ROW issues/illegal mining ROW/strikes by Local Union, it is submitted that on Appointed Date 100% land was handed over to EPC Contractor and joint Memorandum was duly signed by EPC Contractor on dated 28.08.2021. However, the land hindrances as reported by EPC Contractor were always taken up with District Administration for resolving the issues pertaining at site, wherein the same was resolved and intimated vide letter dated 20.01.2022, 19.03.2022 & 30.03.2022. Therefore, the contention of EPC Contractor is not accepted as it is devoid of actual facts. However, as per Clause 4.6 and 8.5 of Contract Agreement, EPC Contractor is solely responsible to take care of works, materials, goods and equipments for incorporation therein and shall protect the site from any and all occupations, encroachments or encumbrances and shall maintain a round-the-clock vigil over the site, from the Appointed date till and until the issue of completion certificate. Further, it is to highlight that the strike due to Mon incident was for a period of 6 hours on 06.12.2021 and the supply chain of material could not be possible hampered by the protest march carried out by NESO. Hence, EPC Contractor is trying to hide its incapability to handle and plan the works at site by stating petty issues which are irrelevant. Therefore, the submission of EPC Contractor is incorrect & denied.

(iv) With regard to issue of Covid-19, it is stated that no such restrictions on movement have been notified on the new guidelines issued by Chief Secretary, Govt. of Nagaland on 08.01.2022. Wherein, it has been mentioned that any person entering the state having vaccinated fully, shall be required to carry a negative COVID-19 test report. However, it is not understood as how the progress of work has been affected on

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the issuance of guidelines dated 08.01.2022, whereas, it is to be highlighted that civil works at neighbouring EPC Contracts are in progress, which clearly subdues the contention of EPC Contractor.

19. NHIDCL/Authority has extended all possible support to expedite the progress of the project. But the EPC Contractor has shown lackadaisical approach to execute the project as per the Contract Agreement.

20. The EPC Contractor has caused breach to Sl. No. 1 & 2 of MoRTH Circular no RW/NH-33044/76/2021 S&R (P&B), dated 06.10.2021 and the EPC Contractor has:

- (a) Failed to set up institutional mechanism and procedure as per Contract.
- (b) Failed to mobilize key construction equipment within a period of 4 months from the Appointed Date.
- (c) Failed 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 milestone/ Schedule Completion date.
- (d) Failed to fulfil its obligations to maintain a highway in a satisfactory condition in spite of two rectification notices issued in this regard.
- (e) Failed to start the works or causes delay in maintenance & repair/overlay of the project.

21. Thus, in view of the aforesaid facts & Circumstances, the Authority is declaring the EPC Contractor M/s Oasis Projects Limited as Non-Performer. *"Upon declaration of non-performer, the EPC Contractor will not be able to participate in any bid of NHIDCL till such time the EPC contractor is removed from the list of non-performers. The EPC contractor shall include its JV partners, promoters whose credentials were considered while qualifying them for the project. Non-performer status of a bidder on the bid-due date will be the criteria for eligibility of a bidder to participate the said bid".*

*RC Singh*  
*10/08/2022*  
**(M. Riten Kumar Singh)**  
**Executive Director-IIT**  
**HQ, NHIDCL**

**Copy to:**

- i. PS To Director(T), NHIDCL, HQ
- ii. ED(T/Ps), NHIDCL
- iii. GM(P)-Dimapur
- iv. Sr. Manager (IT), NHIDCL, HQ to put the notice on the website.