

# 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/HQ/C-Z/AE/2022-23/20

Date: 26.07.2022

To,

Authorized Signatory,  
M/s Planning & Infrastructure Development Consultants Pvt. Ltd.  
In association with M/s Oms Infra Consultants Pvt. Ltd  
B-215-216, Somdatt Chamber-1, Bhikaji-Cama place,  
New-Delhi-110066,  
Email-info@pidcindia.com

Sub: Declaring the Authority's Engineer M/s Planning & Infrastructure Development Consultants Pvt. Ltd. in association with M/s Oms Infra Consultants Pvt. Ltd. as non-performer.

Sir,

National Highways & Infrastructure Development Construction Limited (herein after referred as 'NHIDCL' or 'Authority') and M/s Planning & Infrastructure Development Consultants Pvt. Ltd. in association with M/s Oms Infra Consultants Pvt. Ltd. (Hereinafter referred to as "the Authority's Engineer") signed an Authority's Engineer Agreement on 20<sup>th</sup> February 2019 for the work of "Consultancy Services for Authority's Engineer for supervision of Construction of "Two Lane with hard shoulders of Chakabama - Zunheboto Road from (i) Design Km 0.000 to Km 25.000 (Existing Km 0.000 to Km 25.760) (ii) Design Km 25.000 to Km 50.000 (Existing Km 25.760 to Km 52.370)" in the state of Nagaland under SARDP-NE on Engineering Procurement and Construction mode" at the contract price of Rs. 11,28,71,850/- (Rupees Eleven Crore Twenty-Eight Lakhs Seventy-One Thousand Eight Hundred and Fifty Only), with construction period of 36 months & defect liability period of 48 months and the Commencement Date has been considered as 20<sup>th</sup> May 2019 on the terms, conditions and covenants contained in the Contract Agreement.

2. Whereas, the Authority's Engineer will discharge its obligations as per provision of the Contract Agreement and will ensure compliance of Clause 10.0 of 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, Authority's Engineer failed to deploy the Team Leader at site for more than 30% of the total period since the commencement of work (TL was present for merely 28.20%). In addition to this Authority's Engineer failed to submit suitable replacement after the previous Team Leader left the project site on 20.11.2021 and submitted the CV of Mr. Mohammad Moizuddin Siddiqui for the post of Team Leader on 21.03.2022, who was not medically fit. The observation was raised by the Authority and instructed to submit another CV in his place. But the Authority's Engineer has not submitted any CV of Team Leader till date. It is to mention that Team Leader being very important Key-personnel for the monitoring of Projects has ultimately affected the

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progress of project and has compromised with the quality standards set forth. Due to absence to TL the following deficiencies were observed:

- i. **Delay in submission of Extension of Time (EOT):** In spite of EOT proposal submitted by the Contractor on 19.06.2022, the AE could not recommend the proposal till 05.07.2022. Absence of Team Leader has delayed the proposal. Team Leader is the Key Personnel on ground and is acquainted with all the hindrances. His absence has caused delays in submission of EOT.
- ii. **Delay in submission of Change of Scope (COS):** Contractor proposed for Negative COS after 80% physical progress of works. De-scoping proposal of Catch water drain and RE wall, if not feasible on ground due to certain reasons, could have been suggested by the Team Leader due to constant involvement in consulting of project on ground. However, absence of Team Leader resulted into delay of such foreseeing of the proposal.
- iii. **Lack of Effective Supervision:** Constant absence of Team Leader (72% of the construction period) has resulted into lack of effective supervision. Single Key-Personnel Mr. Sanjay Kumar, Resident Engineer has been doing all the supervision works which was supposed to have been contributed by the Team Leader. Attending RFI, supervision of works, checking of SPSs/IPCs, submission of MPR, FPR, etc. has been done by the Resident Engineer in absence of Team Leader. Correspondence with the Contractor and Authority was made by Head Quarter of PIDCPL-OMS in absence of Team Leader. Review meeting on work progress by PMU, RO and HQ, NHIDCL were attended by the RE in the absence of Team Leader. It has been beyond physical limit of RE to shoulder the responsibility of the Team Leader in addition to his own responsibilities for such a long period (72% of the construction period) which has resulted into lack of effective supervision and monitoring of the project.

5. **Whereas,** Authority's Engineer failed to submit suitable relief after the previous Bridge Engineer (Mr. Baban Prasad Singh) resigned on 01.04.2022. Therefore, the post of Bridge Engineer is vacant since 01.04.2022 leading to lack of supervision of Construction work and proper documents. It is also to mention that the Mr. Baban Prasad Singh, BE was on un-authorized leave for the period 04 Dec-2021 to 04<sup>th</sup> Jan-2022 (32days) and 19<sup>th</sup> Feb-2022 to 10<sup>th</sup> Mar-2022 (20 days). Due to absence to Bridge Engineer the following deficiencies were observed:

- i. **Lack of effective supervision in structural works:** Due to absence of Bridge Engineer during the period when the construction work was on full-fledged, was resulted into lack of effective supervision of structural works. Single Key-Personnel Mr. Sanjay Kumar, Resident Engineer has been doing all the supervision works which was supposed to have been contributed by the Bridge Engineer. Attending RFI, supervision of structural works, etc. has been done by the Resident Engineer in absence of Bridge Engineer.

6. **Whereas,** hence, 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:

- a. **GCC Cl. 4.5 (a),** "Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the

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Consultants, it becomes necessary to replace any of the Personnel, the Consultants shall forthwith provide as a replacement a person of equivalent or better qualification". The AE has violated the following Clause as stated below:

- b. **TOR Cl. 3.1**, "The Authority's Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice".
- c. **TOR Cl. 4.7**, "The Authority's Engineer shall inspect the Construction Works and the Project Highway and shall submit a monthly Inspection Report bringing out the results of inspections and the remedial action taken by the contractor in respect or Defects or deficiencies. In particular, the Authority's Engineer shall include in its Inspection Report, the compliance of the recommendations made by the Safety Consultant".
- d. **TOR Cl. 4.9**, "For determining that the Works conform to Specifications and Standards, the Authority's Engineer shall require the Contractor to carry out, or cause to be carried out, tests at such time and frequency and in such manner as specified in the Agreement and in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests specified in the IRC Special Publication-11 (Handbook of Quality Control for Construction of Roads and Runways) and the Specifications for Road and Bridge Works issued by MORT&H (the "Quality Control Manuals") or any modifications/ substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance".
- e. **TOR Cl. 4.10**, "The Authority's Engineer shall test check at least 20 (twenty) percent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor".
- f. **TOR Cl. 10 (Performance)**, "Authority's Engineer be expected to fully comply with all the provisions for Authority's Engineer for Supervision of "Two lane with hard shoulders of Chakabama - Zunheboto Road from (i) Design Km 0.000 to Km 25.000(Existing Km 0.000 to Km 25.760) (ii) Design Km 25.000 to Km 50.000 (Existing Km 25.760 to Km 52.370)" in the state of Nagaland under SARDP-NE on EPC Mode. As per "Terms of Reference" the Authority's Engineer 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. Any failure of the Authority Engineer in notifying to Employer and the Contractor on non-compliance of the provisions of the EPC Contract Agreement and other schedules by the EPC Contractor, non-adherence to the provision of ToR and non-adherence to the time schedule prescribed under ToR shall amount to non-performance.
- g. **GCC Cl. 3.1.1**, "Standard of Performance - The Consultants shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods "The Consultants shall always" act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub consultants or Third Parties".
- h. **GCC Cl. 4.5 (b)**, "If the Client (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action. or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Client".

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7. Whereas, the Authority's Engineer has also caused the breach of the following clauses of the Ministry circular no RW/NH-33044/76/2021 S&R (P&B), dated 07.10.2021 and NHIDCL Inter Office Memo no. NHIDCL/F&A/HQ/SOP Contract Management/e-206721 dated 06.06.2022:

- i. Failed 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).
- ii. Failure to propose action (like Cure Period Notice, Levy of damages, etc.) on Contractor/Concessionaire as per Contract Agreement on account of poor quality/workmanship.

8. Whereas, the Authority/NHIDCL issued the Show Cause Notice dated 06.04.2022 to the Authority's Engineer and highlighted the above defaults and requested the Authority's Engineer to furnish the reply that as to why it should not be declared 'Non-Performer' in accordance with MoRTH Circular dated 07.10.2021. Vide the said Show Cause Notice, NHIDCL/Authority informed the following to the Authority's Engineer:

(i) The First Team Leader, Mr. Anil Kumar Singh for the subject road project was deployed from 20.05.2019 by your firm and he applied for sudden long leave due to health issues, vide letter dated 10.01.2020. Your firm submitted the CV of Mr. A.P. Asthana as a Team Leader for replacement and his CV has been approved by the Competent Authority, vide letter dated 23.01.2020, but had not reported to site.

(ii) NHIDCL issued notice for non-deployment of Team Leader, vide letter dated 02.08.2021, but your firm has not complied satisfactory reply. After the lapse of 561 days, your firm submitted the CV of Mr. Sidheshwar Choubey, Team Leader for replacement and the same was approved by the Competent Authority.

(iii) Mr. Sidheshwar Choubey, Team Leader was on leave from 05.11.2021 to 15.11.2021 and applied for an extension of leave from 16.11.2021 to 20.11.2021, but till date, he was not re-joined nor given any satisfactory reply. Several Show Cause Notices vide letters dated 10.12.2021, 03.01.2022, 08.01.2022 and 28.02.2022 and the reply of the Authority's Engineer was not found satisfactory.

(iv) Subsequently, your firm has submitted the CV of Mr. Mohammed Moizuddin Siddiqui as a replacement for the Team Leader engaged after lapse of 125 days. The observations were raised by the NHIDCL on the fitness of the Team Leader, Mr. Mohammed Moizuddin Siddiqui. Vide letter dated 13.03.2022, a penalty notice as per Clause 4.5 (b) of SCC for non- deployment of Team Leader, was issued.

(a) It is mentioned from the table mentioned below that the service of Team Leader in the projects have been for a limited period only, and for most of the period, the project has suffered due to non-deployment/absence of Team Leader.

(b) Out of 1045 days since the Commencement Date, Team Leader has served only for 316 days which is 30% of the total period till date.

S. No.	Staff Details	Name	Designation	Deployment		No. Of days
				From	To	
1	Key Personnel	Mr. Anil Kumar	Team Leader	20.05.2019	10.01.2020	235
2		Mr. Sidheshwar Choubey	Team Leader	31.08.2021	20.11.2021	81

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(v) NHIDCL/Authority vide letter dated 03.01.2022 has also issued Show Cause Notice on unauthorized leave for Mr. Baban Prasad Singh, Bridge Engineer, and the response of the Authority's Engineer was not found satisfactory.

(vi) NHIDCL/Authority vide letter dated 17.08.2021 and 08.09.2021 issued the Show Cause Notice to the Authority's Engineer for placing it in Negative List for lack of effective supervision, failure to inspect the site by Key Personnel on basis and failure to deployment of Team Leader. The Authority's Engineer vide letter dated 01.09.2021 had replied stating that as a matter of very personal issue of the absentee and is without any valid proof. The Authority's Engineer stated that there was no failure in deployment of Key Personnel, and it was again intimated that the Team Leader was not present at the site for 886 days on the whole project duration from the start till date.

(vii) It was observed that even after several notices issued, the Authority's Engineer has not taken adequate interest to comply with the requirements for successful project execution.

9. Whereas, the Authority's Engineer, vide letter dated 20.04.2022 submitted its reply stating therein that Team Leader did not resume duty on the site due to health issues and pandemic situation.

10. Whereas, NHIDCL/Authority, perused the reply dated 20.04.2022 of the Authority's Engineer and again informed that several notices on absence of Team Leader but he did not join the site nor replied. It would be pertinent to mention that the non-availability of designated key personnel will not be compromised at any cost. Subsequently, the Authority's Engineer will be held responsible for the defects in Project/delay in completion/ documentation due to shortage of key personnel during the execution of the project. The service of the Team Leader has been for only a limited period of time and for most of the period, the project has been subjected to non-deployment of the Team Leader/absence of Team Leader. Out of the 1072 days since the Commencement Date, the Team Leader has served only for 316 days which is 30% of the total period till date. No reason has been mentioned for absence of Mr. Baban Prasad Singh in Dec. 2021. The CV of Mr. Mohammad Moizuddin Siddiqui for the post of Team Leader as submitted by Authority's O-Engineer has been found physically unfit.

The Authority's Engineer was again requested to furnish the reply.

11. Whereas, Authority's Engineer vide letter dated 28.04.2022 stated that the financial progress are more than 90% in package-I and more than 80% in package-2. The Authorized Signatory of the Authority's Engineer visited the site frequently and did all the needful required for achieving progress of the work maintaining the quality and quantity of the works. However, again vide letter dated 02.05.2022, the NHIDCL/Authority informed the Authority's Engineer that pandemic situation is not a valid reason as work is ongoing in Nagaland with others working in the same situation. The Authority's Engineer approached various eligible person for the position of Team Leader but none of them agreed to be mobilized for such a short period of time, The physical progress in package-I is more than 95% and in package-II is more than 85%. The Authority's Engineer was again requested to deploy a suitable person for the position of Team Leader for the documentation/completion of the project at the scheduled time.

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12. Whereas, the Authority's Engineer again responded to the NHIDCL/Authority stating that the age of Team Leader is more than 60 years and he is suffering from serious health troubles. As the Team Leader was having 30 years experience so some more time is needed for the submission of CV of Team Leader for replacement. The Authority/NHIDCL vide its letter dated 14.05.2022 responded to this letter stating that marks, as per various item heads are the deciding criteria rather than years of experience and the qualifying marks are required for the post of Team Leader. Hence, the Authority's Engineer was again requested to deploy the eligible person for the post of Team Leader for the documentation/Completion of the project at the Scheduled Time.

13. After considering the aforesaid facts and circumstances, the Authority/NHIDCL is of the view that the following defaults are attributable on the part of the EPC Contractor for declaring it as 'Non-Performer' in light of the Ministry of Road, Transport & Highways Circular dated 07.10.2021:

(i) That the deployment of the Team Leader was not more than 30% of the period since commencement of the subject work.

(ii) As per records, the Team Leader was present at site only for 316 days out of 1115 days (till 08.06.2022) since commencement of the subject work dated 20.05.2019, in spite of the fact that Team Leader is the very important key personnel for the monitoring and quality work execution.

(iii) There has been unauthorised absence of Mr Baban Prasad Singh, Bridge Engineer, from 04th December, 2021 to 04th January 2022 and from 19th Feb. 2022 to 10th March, 2022 is not justified.

(iv) Mr. Baban Prasad Singh, Bridge Engineer has resigned on 01.04.2022. In this regard, the Authority's Engineer was asked to submit suitable CV for the replacement of Bridge Engineer, but there is no CV received for the replacement.

(v) The Authority's Engineer has assigned the charge of Bridge Engineer to Resident Engineer Mr. Sanjay Kumar on 07.06.2022 (after 68 days of the resignation of the earlier Bridge Engineer), who is also having the charge of Team Leader. Thus, Mr. Sanjay Kumar, is having the charge of Team Leader, Resident Engineer and Bridge Engineer. This affects the monitoring of works adversely at site for the projects which are of national importance. Several show cause notices have been issued for mobilization of various vacant posts and for better monitoring works, but no proper action has been taken.

(vi) The Team Leader and Bridge Engineer are two very responsible key personnel for the monitoring and quality works in the project.

14. In view of the aforesaid facts and circumstances, it is stated that the Authority's Engineer has caused breach to Clause 3(b) of MoRTH circular dated 07.10.2021 including the other provisions of the Consultancy Agreement, hence, NHIDCL/Authority is hereby declaring the Authority's Engineer, M/s Planning & Infrastructure Development Consultants Pvt. Ltd, in association with M/s Oms Infra Consultants Pvt. Ltd. (jointly and severally) as Non-Performer. *"Upon Declaration of non-performer, the Authority's Engineer will not be able to participate in any bid for National Highways projects with MoRTH or any other executing agencies till such time this order persists or the Authority's Engineer is removed from the list of Non- Performers. The Authority's Engineer shall include its JV partners, promoters etc. whose credentials were considered while qualifying them for the project".*

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15. This order is issued without prejudice to the rights available to the NHIDCL/Authority under the provisions of the Contract Agreement and/or applicable laws.

16. This issues with approval of the Competent Authority.

*RKSingh*  
*26/07/2022*  
M Riten Kumar Singh  
Executive Director (III)

Copy To:

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