

राष्ट्रीय राजमार्ग एवं अवसंरचना विकास निगम लिमिटेड

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार
तीसरी मंजिल, पीटीआई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110 001

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 2335 1282, www.nhidcl.com



सार्वजनिक क्षेत्र का उपक्रम

A PUBLIC SECTOR UNDERTAKING

NHIDCL/DPR/Imphal-Jiribam/NH-53/290

Dated: 11.08.2017

To

- 1) Director General (RD) & SS, Ministry of Shipping, Road Transport & Highways.
- 2) Chairman-National Highway Authority of India (NHAI)
- 3) Chief Secretaries/Secretaries (PWD/Roads) of all State Governments/UTs dealing with National Highways and Centrally Sponsored Schemes.
- 4) Chief Engineers of all States/UTs dealing with National Highways and Centrally Sponsored Schemes.
- 5) Director General (Border Roads), Seema Sadak Bhawan, Ring Road, Naraina, New Delhi-110010
- 6) All officers of NHIDCL HQ/branch Office.
- 7) Media Relation/IT Division of NHIDCL with a request to get it hosted on NHIDCL website.
- 8) General Manager- INFRACON, NHIDCL.


Sub: Debarring/Blacklisting of M/s CDM Smith India Pvt. Ltd. from short-listing, participating or bidding for projects of or to be undertaken by NHIDCL.

Sir/Madam,

Ministry of Road Transport & Highways (MoRTH) had entered into a Contract Agreement dated. 24.04.2015 with M/s CDM Smith India Pvt. Ltd. for the project "Consultancy Services for preparation of Feasibility Study and detailed Project Report for improvement to Two laning with paved shoulder/4 laning of Imphal-Jiribam section of NH-37 (NH-53) in the state of Manipur on EPC mode under JICA". The project was entrusted to National Highways and Infrastructure Development Corporation Ltd. (NHIDCL) for DPR preparation and a Tripartite Agreement was signed on 10.09.2015 with NHIDCL.

2. By Order dated 18.07.2017 National Highways & Infrastructure Development Corporation Limited (NHIDCL) debarred M/s CDM Smith India Pvt. Ltd. for a period of 2 years due to time and cost overruns to NHIDCL on account of their poor performance and for creating an adverse effect on the reputation of NHIDCL and Ministry of Road Transport & Highways Govt. of India and the public at large.

3. The complete debarment order dated 18.07.2017 is hosted on the NHIDCL website www.nhidcl.com and also enclosed for reference.


Col. Rajeev Sood (Retd)
General Manager (Tech)

REGD A.D./COURIER/BY HAND

No. NHIDCL/DPR/Imphal-Jiribam/NH-53/245

Dated: 18.07.2017

To

M/s CDM Smith India Pvt. Ltd.,
No. 75, 2nd floor, 14th Cross,
1st Block, R.T. Nagar,
Bangalore- 560032.

[Kind Attn: - Shri Mahesh Krishna, Authorized Signatory]

Subject: - Consultancy Services for preparation of Feasibility Study and Detailed Project Report for improvement to Two laning with paved shoulder/ 4 laning of Imphal-Jiribam section of NH-37 (NH-53) in the State of Manipur on EPC mode under JICA.

Ref:- Your letter dated 04.04.2017 and order dated 20.02.2017 passed by the Hon'ble Delhi in W.P (C) No. 1422/2017.

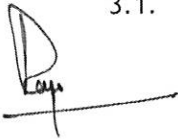
Sir,

1. Reference to your above mentioned letter dated 04.04.2017 containing written submissions pursuant to the personal hearing on 28.03.2017.
2. Whereas pursuant to the order of the Hon'ble Delhi High Court dated 20.02.2017, a personal hearing was conducted, only on the issue of debarment and was held by the competent authority on 28.03.2017.
3. Whereas pursuant to the personal hearing on 28.03.2017, you have submitted a written representation to NHIDCL for consideration which has been considered in depth. Our reply to your written submissions is as follows:-

3.1. Whereas the Hon'ble High Court was pleased to observe that the order dated 20.02.2017 thereby setting aside order of 09.11.2016 was restricted solely to the issue of debarment of M/s CDM Smith India Pvt Ltd. and the Hon'ble High Court was further pleased to observe that the order does not in any manner comment on the action of termination of the Contract Agreement.

3.2. Whereas NHIDCL has considered the written representation dated 04.04.2017 and its speaking order follows herewith on the issue of debarment.

3.3. Whereas after furnishing the performance security as stipulated, in the Letter of Acceptance under clause 7 of the Contract Agreement, the consultant was instructed and required to proceed with the execution of the said works, to



complete the same within duration of 9 months as mentioned in clause 2.4 of the special conditions of the Contract. It is a fact that the progress physically achieved by the Consultant was abysmally low even after lapse of 14 months. As per the TOR and the Contract Agreement dated 24.04.2015, the Consultant was supposed and required to perform the services in four stages but after a lapse of 14 months, the Consultant was not even able to perform and complete his obligations up to stage -II.

- 3.4. Whereas NHIDCL has conducted multiple meetings and further thereto issued various show cause letters to the Consultant namely M/s CDM Smith India Pvt. Ltd for completion of the assignment by deploying adequate manpower and resources in line with the provisions of the Contract Agreement. In addition, the Consultant was also directed by NHIDCL to maintain site office which the Consultant failed to do. The progress physically achieved by the consultant was abysmally and shockingly low even after lapse of one year and two months, in as much that not even stage -II (draft feasibility report, alignment plan and cost estimate etc.), as per clause 10.3 of TOR, was completed till date of termination, which clearly indicates about the non-performance of the Consultant.
- 3.5. Whereas the Consultant had submitted the 1st invoice to NHIDCL on 01.03.2016 after the expiry of the Contract Agreement on 12.02.2016 and whereas no request for extension of Contract period was received by NHIDCL and consequently the Contract Agreement lapsed and therefore the payment could not be released. Despite the promises made and re-assurances given by the Consultant to NHIDCL during a review meeting held on 06.04.2016, no improvement whatsoever was been made in the progress of the work. The Consultant was requested to give a presentation on 15.06.2016 and submit the alignment plan however the Consultant failed to turn up for the said presentation on 15.06.2016 and also failed to submit the alignment plan in total breach of obligations.
- 3.6. Whereas the allegation and contentions raised by M/s CDM Smith India Pvt. Ltd. in relation to the proposed debarment is untrue and an afterthought and moreover the contention that the debarment was made under clause 7.3 of the Contract Agreement is wholly misplaced and misconceived. It is reiterated that the show cause notice was issued to the Consultant for debarment for a period of two years under clause 7.4.2 which allows the Authority to debar the defaulted Consultant on account of time and cost overruns and adversely affecting the reputation of NHIDCL. In this regard, it is stated that the Imphal-Jiribam road is the main connectivity in the state of Manipur. The development of this road was of great importance and critical in case of any untoward incidence like bandh, strike etc. The development of the road was of national importance and would ultimately be a key link road from strategic point of view and national security. NHIDCL was compelled to terminate the contract on account of non-performance of the Consultant leading to re-invitation of bid which attracted cost and time overruns for the development of the stretch. Hence, the penalty of the debarment was imposed on the Consultant. It is clarified that since in the earlier debarment order no period was mentioned, therefore, as per the direction of the Hon'ble High Court

the same was modified and a fresh Show Cause notice for debarment was issued to the Consultant.


- 3.7. Whereas with reference to the presentation, the Consultant was advised time and again to give the presentation and finalize the alignment of the stretch. However, the Consultant, on the pretext of non-receipt of payment and various other pretexts desisted from giving the presentation. It was made clear to the Consultant that more than one year has passed and the payment could be released only after they sought an extension of time on valid grounds, which the Consultant failed to do at their own risk. Hence, the contention of the Consultant that the presentation was not given as the payment was not made is factually incorrect and wholly misplaced.
- 3.8. Whereas the Suspension Notice was issued on account of non-performance of the Consultant, as per the provisions of the Contract Agreement, thereby giving specific reasons for the failure of the Consultant, which they have not denied but insisted on payment and thereafter arbitrarily terminated the Contract on account of default in making payment. Ground 3.6 above is reiterated at this stage.
- 3.9. Whereas the Consultant failed to deploy the manpower for successful completion of DPR and also failed to establish the site office as reported by GM (P). Hence, the Suspension Notice was issued and subsequently the Contract Agreement was terminated.
- 3.10. Whereas it is incorrect that the Suspension Notice and Termination Letter and debarment letter are imaginary, without merit, unreasonable, arbitrary and unjustified. The Suspension Notice was issued giving the full facts of the slackness of the Consultant and non-performance at site. The Consultant was not even able to mobilize manpower and establish site office after lapse of 14 months. The Authority had no option but to initiate action, as the stretch of road is of utmost importance at National Level. Non-performance of the Consultant has burdened the Authority with time and cost overruns for the project.
- 3.11. Whereas the Performance Bank Guarantee submitted by the Consultant has been encashed as per the provision of the Contract Agreement after giving due notice to the Consultant. The payment for Inception Report could not be made as the time limit has already expired and the Consultant has not applied for extension of time, which is the first and foremost condition for release of payment for Inception Report. The arbitrary termination of the Contract Agreement by the Consultant was not at all justified and within the provisions of the Contract Agreement. The payment of Inception Report cannot be released without extension of time of Contract, which the Consultant had not applied for inspite of repeated reminders. Hence, Suspension and Termination of Contract by Authority is within the frame work of Contract Agreement and legally valid.
- 3.12. Whereas it is reiterated and made clear that the order passed by Hon'ble Delhi High Court dated 20.02.2017, only deals with the issue of debarment and thereby directed NHIDCL to reinstate the entire steps afresh in view of the fact that the earlier notice for debarment was for an unspecified period. It is stated that the perusal of the entire order makes it aptly clear that the issue of termination of the

Contract Agreement was not interfered with by the Hon'ble High Court, as such all issues raised by M/s CDM Smith India Pvt. Ltd. in relation to the issue of termination stands forclosed.

- 3.13. Whereas your written representation has been considered by the competent authority and in pursuance of the personal hearing conducted on 28.03.2017, it is the decision of the competent authority at NHIDCL, that the deficiencies caused by M/s CDM Smith India Pvt. Ltd. in not completing the Detailed Project Report in time has resulted in serious consequences for NHIDCL including time and cost overruns and had created an adverse effect on the reputation of NHIDCL and its Ministry being the Ministry of Road Transport & Highways Govt. of India and therefore to the public at large. As a result of the above, the competent authority is of the firm decision that M/s CDM Smith India Pvt. Ltd. ought to be debarred for a period of 2 years and is hereby debarred for a period of 2 years from the date of this notice.
- 3.14. Whereas in request of amicable settlement, it is stated that you have not submitted any proposal in this regard. Further amicable settlement regarding the payment etc and termination/debarment can't be considered on this account.
- 3.15. Whereas the written submission made by you on account of the personal hearing is not found satisfactory hence M/s CDM Smith India Pvt. Ltd. pursuant to Clause 7.4.2, is debarred for a period of 2 years due to time and cost overruns to NHIDCL on account of their poor performance and for reasons as above.

This is issued with the approval of the Competent Authority

Yours Sincerely


Col. Rajeev Sood (Retd)
GM (T)