

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
3rd Floor, PTI Building, 4-Parliament Street, New Delhi-110001, +91 11 23461600, www.nhidcl.com



(भारत सरकार का उद्यम)

(A Government of India Enterprise)

No.NHIDCL/AS/Jhanji-NH-37/222231/ २५३०

Date:19.05.2023

To,

M/s Kamac Engineers Pvt. Ltd. in JV with M/s Shiva Harlalka
1st Floor, Pameshwari Building,
Chatribari Road, Guwahati- 781 001,
Assam, Email: shiva.harlalka@gmail.com

Sub: Four Laning of Jhanji to Demow from Km. 491.050 to Km. 535.250 of NH-37 in the state of Assam under SARD on Engineering Procurement and Construction (EPC) Mode - **ORDER of DEBARMENT** for a period of **ONE YEAR** from participating in the future projects of NHIDCL - Reg.

Ref. NHIDCL Letter no. 2374 dated 26.04.2023

Sir,

As per the provision of RFP, Clause 2.1.11 (f) (iii) states,

Whereas, as per the RFP clause 2.1.11 (f) (iii): *"all members of the Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the Defect Liability Period is achieved in accordance with the EPC Contract"* .

Further, the Joint Bidding Agreement for Joint Venture (Appendix V) Para 5: Joint and Several liability states that :

" The parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the project and in accordance with the terms of the RFP and the EPC contract, till such time as the completion of the project is achieved under and in accordance with the EPC contract."

2. Whereas, the subject project contract was awarded vide LOA letter no. 1724 dated 25.07.2022 to M/s Kamac Engineers Pvt. Ltd. in JV with M/s Shiva Harlalka , therefore the Order of Debarment issued vide letter No.NHIDCL/As/Jhanji-NH-37/222231/2374 dated 26.04.2023 to M/s Shiva Harlalka in not as per the provisions of the RFP and the Joint Bidding Agreement and is superceded by this order.

3. Whereas, on account of inevitable TERMINATION of the EPC Contractor engaged for the work "4- Laning of Jhanji to Demow section from Km. 491.050 to Km. 535.250

of NH-37", bids were invited by NHIDCL for the balance work of subject project vide Tender ID: 2022_NHIDC_685892_1 dated 27.04.2022, with Bid Due Date 30.05.2022 at an estimated cost of Rs. 271.12 Cr. The Bids were opened on 31.05.2022. The Tender Evaluation Committee of NHIDCL evaluated the bids in its meeting on dated 07.07.2022 and the bidders were found "Technically Responsive". The financial proposal was opened on 22.07.2022 and "M/s Kamac Engineers Pvt. Ltd. in JV with M/s Shiva Harlalka" was found to be the L1 bidder (hereinafter referred to as "Contractor") at a quoted price of Rs. 234,19,90,000/- (13.62 % below the cost put to Tender). The LOA was issued on 25.07.2022 and subsequently the Contract was signed on 01.09.2022 and the Appointed Date was fixed as 21.09.2022. The duration to complete the construction of the balance work of the subject project was kept 18 (eighteen) months i.e., 21.03.2024 with Defect Liability Period (DLP) of 60 (sixty) months i.e., 21.03.2029.

4. Whereas, NHIDCL received a complaint (hereinafter referred to as "Complainant") vide letter dated 15.11.2022 to Director (Technical), NHIDCL alleging that the JV member of the Contractor M/s Shiva Harlalka has misrepresented the facts while submission of the technical bid for the subject project mainly stating that (i) all the 3 (three) works has been considered under category -3 instead of category - 4, (ii) wrong statement for the payment received till financial year of 2020 - 2021 while uploading its documents on the CPP Portal and (iii) regarding not comparing the facts between both completion certificate (one submitted in technical bid and other as office copy supplied by Executive Engineer, PWD, Assam). The complaint of the Complainant has been investigated. The chronology of the correspondences made in this regard are as below:

Sr. No.	Date	Remarks
1	05.07.2022	Letter to Executive Engineer seeking clarification regarding confirmation of issue of work completion certificate.
2	22.03.2023	Letter to M/s Shiva Harlalka seeking details of payment actually received in the financial year 2020-21 against all the projects claimed at the time of bidding.

5. Whereas, the Contractor vide its letter dated 29.03.2023 in response to NHIDCL letter dated 22.03.2023 conveyed the following:

Para 2: "In this regard, it is to submit that, as per details asked by the Authority, we hereby request the Authority to refer Clause 2.2.2.6 (ii) of the RFP, wherein, it is clearly written that "For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have received payments from its client(s) for construction works executed, fully or partially, or work executed and certified by the Engineer-in Charge/ Independent Engineer/Authority's Engineer during the 5 (five) financial years immediately preceding the bid Due Date, and only

the amounts (gross) actually received, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, receipts of or work executed amount less than 5% of the Estimated project Cost shall not be reckoned as receipts for Eligible Projects". From the above, it may please be derived that, there are two bases for calculation of technical capacity (1) Bidder should have received payments from its clients(s) for construction works executed, fully or partially, or (2) work executed and certified by the Engineer in Charge/Independent Engineer/Authority's Engineer. But from the Authority letter it looks like that, the Authority is relying only on 1 base only and is not giving any preference to 2nd bases for the computation of technical capacity. Therefore, partial relying on its own documents by the Authority is not a good industry practice and also not legally valid.

However, since we are duty bound to provide the information asked for, the details of payments actually received for the three projects as referred in the above letter is as follows;

Project Details	Bill Amount	Amount Received	As per fixation of ceiling provided by the bidder (Rs. In Crore)	Receipt Year
Project Code: a	i. 128059279.00	128059279.00	12.80	2020-21
	ii. 183277080.00	91639000.00	9.16	2020-21
	Total Receipts for "a"	219698279.00		
Project Code: b	i. 128439982.00	128439982.00	12.84	2019-20
	ii. 33321485.00	33321485.00	3.25	2020-21
	iii. 10610773.00	10610773.00	0.57	2020-21
	Total Receipts for "b"	172372240.00	16.66	
Project Code: c	i. 113028454.00	113028454.00	11.30	2019-20
	ii. 36605709.00	36605709.00	3.66	2020-21
	iii. 14004725.00	14004725.00	0.70	2020-21
	Total Receipts for "c"	163638888.00	15.66	
Total Receipts for project a, b & c		555709407.00		

Remarks; The balance payment of Rs. 91638080.00 against Bill no. (ii) of Project 'a' was received in FY 2021-22. However, the work was completed in FY 2020-21 only and

the same is also certified by the Ex. Engineer and Financial Sanction of the same was also released in financial year of 2020- 2021.

Para 3: Therefore, we hereby request the Authority to rely on the work experience certificates certified by the Engineer-in-Charge submitted by us with the bid documents and if there is any doubt to the Authority, then Authority may get the same certificates verified from the certificate issuing Authority.

Para 4: We hereby want to submit that, we have submitted our credentials based on the work executed and certified by the Engineer-in-Charge /Independent Engineer/Authority's Engineer as per the provisions of RFP. Therefore, the Authority is requested to please get verified the same.

Para 5: It is an admitted position of fact that all information including supporting documents sought herein are already with you since 31.05.2022 i.e. date of submission of tender documents. Pertinently, we were awarded the aforesaid contract vide letter of Award dated 25.07.2022, only upon due examination and verification of all the credentials including supporting documents from respective offices of the departments by NHIDCL. We have no other/additional documents which can be provided at this stage, as sought in your letter under reply.

Para 6: Since, the award of work, the work at site is going in full swing, which is important project of the state and we have been able to achieve all the milestones much before the stipulated time. With all our concentration on expeditious completion of work, as on 24.03.2023 we have achieved 18.21% (Physical Progress) and 15.19% (Financial Progress) i.e. upto SPS -05 in record time. Your misadventure in seeking the documents again and again, which are already in your custody and possession since 31.05.2022, will engage us unnecessarily that only hamper the progress of work, which is detrimental to the Interest of everyone including NHIDCL and us."

6. Whereas, upon further investigation, it has been noted that based on the categories of work for project code- a, b & c submitted by joint bidder M/s Shiva Harlalka, the Technical Evaluation Committee (TEC) considered the projects under category 3 of the works based on the nature of the work executed by the contractor on verifying from the records (completion certificate issued by the Executive Engineer) the works executed by the bidder as the work includes the work of widening in stretches therefore, the consideration of the project in category 3 by TEC is in accordance with clause 2.2.2.5 and 2.2.2.6 of RFP.

7. Whereas, this office vide its letter dated 22.03.2023 had asked the Contractor to submit the details of payment actually received in the financial year 2020-21 against all the projects claimed at the time of bidding.



8. Whereas, in reply to the said letter dated 22.03.2023, the Contractor vide its letter dated 29.03.2023 has submitted *the fixation of ceiling only and did not submit the signed copy of payment received from the concerned division or any bank statement which certify whether the payment has been received in account or not.*

9. Whereas, based on the submission made by the Contractor vide its letter dated 29.03.2023 and at the time of submission of bid for the subject project, the following observations are noted;

(i) The comparison of the payment received by the bidder at the time of “bid submission”, and the “instant submission by contractor” as well as at the “Fixation of ceiling document submitted by the M/s Shiva Harlalka are as follows:

Project Details	At the time of bid submission (Rs in Cr)	At the Instant submission by contractor (Rs in Cr)	As per fixation of ceiling provided by the bidder (Rs. In Crore)
Project Code: a	31.13	12.80	12.80
		9.16	9.16
Total (A)	31.13	21.96	21.96
Project Code: b	12.84	12.84	12.84
	4.39	3.33	3.25
		1.06	0.57
Total (B)	17.23	17.23	16.66
Project Code: c	11.30	11.30	11.30
	5.06	3.66	3.66
		1.40	0.70
Total (C)	16.36	16.36	15.66
Total (A+B+C)	64.72	55.57	54.28

(ii) The details of the evaluation as per RFP clause.

Other Member : M/s Shiva Harlalka						Total Received with updation factor	Total Received without updation factor
Updation Factor as per RFP	1.2	1.15	1.1	1.05	1		
Payment Received							
Financial Year (B)	FY	FY 2017-	FY	FY	FY		

Sr. No.	Project Code	2016-17	18	2018-19	2019-20	2020-21		
1	a	0	0	0	0	21.97	21.97	21.97
2	b	0	0	0	12.84x1.05= 13.482	3.82	17.30	16.66
3	c	0	0	0	11.30x1.05= 11.865	4.36	16.23	15.66
							<u>55.50</u>	<u>54.28</u>

(iii) The details of the evaluation as per RFP clause and assessment mentioned below:

Particulars	Required as per RFP	As evaluated during bidding	As evaluated based on fixation of ceiling document provided by the bidder
Minimum Threshold Technical Capacity required as per clause 2.2.2.1(i)	271.12 Cr	655.74 Cr.	645.32 Cr.
Minimum Threshold Technical Capacity required as per clause 2.2.2.4(i) for Lead Member	162.67 Cr.	589.82 Cr.	589.82 Cr.
Minimum Threshold Technical Capacity required as per clause 2.2.2.4(i) for Other Member	54.22 Cr	65.93 Cr.	55.50 Cr.

10. Whereas, as per fixation of ceiling document provided by the bidder for all the 3 (three) project as claimed by the bidder in technical bid, the technical threshold capacity has been re-examined and was assessed Rs. 55.50 Crore and found that the JV member M/s Shiva Harlalka has still fulfilled the technical threshold capacity required for other member of JV as per RFP. At the time of evaluation of technical bid submitted by the bidder M/s Shiva Harlalka, payment received from all the 3 (three) projects as claimed by the bidder in Annexure-II of Appendix IA of RFP has been considered from the Statutory Auditor certificate submitted in the technical bid.

11. Whereas, it was also observed that the certificate uploaded by joint bidder and the certificate issued by Executive Engineer PWD have minor discrepancies but the substance of both certificates is found to be same.

12. Whereas, based on the facts stated above, the following are established that;

(i) The JV Member of Contractor M/s Shiv Harlalka has mis-represented the details pertaining to the payment received at the time of the bidding.

(ii) The statutory auditor certificate representing the amount received has been furnished relying on the work experience certificate issued by the Executive Engineer considering the work was completed in FY 2020-21.

13. As per RFP, Section-4 - Fraud and Corrupt Practice,

Clause 4.1 *"The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a BID, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit & appropriate the Bid Security or Performance Security, as damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise."*

Clause 4.2 "Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 1 (one) year from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

Clause 4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them: (b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

14. The Contractor has mis-represented of the facts made at the time of the bidding of the subject captioned work further on account of actual receipt of the



payment status upto FY 2020-21 at the time of bidding, although no benefit has been extended to the Contractor, as the Contractor still technically eligible for the subject cited work as per the stipulation of the RFP document. However, in view of the facts and circumstances, the Contractor has misrepresented and therefore under Clause 4.2 of the RFP, **the contractor M/s Shiva Harlalka is debarred for one year from the date of issue of letter of debarment i.e. such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 1 (one) year.**

15. Based on the facts stated above, it is proposed to issue the Order of Debarment in the name of the JV i.e. M/s Kamac Engineers Pvt. Ltd. in JV with M/s Shiva Harlalka. The Contractor M/s Kamac Engineers Pvt. Ltd. in JV with M/s Shiva Harlalka is being warned herewith to be cautious while participating in future bids/tenders.

16. This order of debarment is hereby issued without prejudice to the rights of the NHIDCL available under the relevant provisions of the RFP/Contract Agreement as well as other applicable laws.

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



(W. Blah)
Executive Director

Copy for kind information to:

1. PS to MD, NHIDCL
2. PS to Director (A & F), NHIDCL
3. PS to Director (T), NHIDCL
4. CVO, NHIDCL
5. All ED(T/P)s of NHIDCL for vide circulation in the respective Technical Divisions and PMUs/SOs.
6. GM(IT), NHIDCL - requesting to upload the order on the NHIDCL Website.