



सत्यमेव जयते

# भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)

## National Highways Authority of India

(Ministry of Road Transport and Highways, Government of India)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली - 110 075 • G-5 & 6, Sector-10, Dwarka, New Delhi-110075

दूरभाष/Phone : 91-11-25074100 / 25074200



NHAI/HQ/MP/2023/SOWIL/Debarment (e-File 201801)

Date: 01.09.2023

To,

The Authorized Representative  
SOWIL Limited,  
Northern region,  
D-157, Sector-7,  
Noida - 201301, Uttar Pradesh  
e-Mail - north@sowillimited.com

Sub.: Rehabilitation and Up-Gradation of Jabalpur-Bhopal Section of NH-12 from Km. 130.000 to Km. 301.200 to four lanes with Paved Shoulder with Provision of rigid Pavement on EPC mode Under NHDP-III in State of Madhya Pradesh (from Bareli to Goharganj (Bineka Village) Section of NH-12 Km. 193+000 to Km. 255+300 "Package-IV") ("Project") - Issue of Debarment Notice due to Consultant's deficiency in Services - Reg.

Ref:

- 1) Consultancy Agreement dated 31.05.2004.
- 2) NHAI letter no. NHAI dated 06.10.2021
- 3) Consultant letter dated 16.11.2021 received on 23.05.2022
- 4) NHAI letter dated 11.05.2022.
- 5) NHAI letter dated 26.05.2022
- 6) Consultant letter dated 09.06.2022
- 7) NHAI letter dated 07.07.2022

This has reference to the Letter of Award ("LoA") issued by the National Highways Authority of India ("NHAI"/ "Authority") to SOWIL Limited ("DPR Consultant") for the preparation of the Detailed Project Report ("DPR") for the subject Project on 13.05.2004. Accordingly, the consultancy agreement was signed between the NHAI and DPR Consultant on 31.05.2004. In this regard, a supplementary agreement was also executed between NHAI and the DPR Consultant on 12.01.2010. Both the aforesaid consultancy agreement and the supplementary agreement are collectively referred to as the "Consultancy Agreement". The Contract value for the DPR of the Project was Rs. 1.18 Cr. + 0.22 Cr. as variation, with the scheduled time period for completion being 10 months.

2. Basis the DPR prepared by the DPR Consultant, Madhya Pradesh Road Development Corporation Limited ("MPRDC") invited tenders for civil work of the subject Project on EPC mode. The construction of the civil works was awarded to M/s Ramky Infrastructure Ltd. & M/s Brij Gopal Construction Company Ltd. (JV) ("Contractor") and the agreement between MPRDC and the Contractor was signed on 20.04.2016 ("Contract Agreement"). The Appointed Date for the Project was declared on 10.06.2017 with the contract price of Rs. 556.02 Cr.

3. Due to the deficiency in the DPR prepared by the Consultant, during execution major change of scope has occurred due to change in alignment in following 09 locations in forest area of the Project, which resulted into unnecessary/ infructuous expenditure of Rs. 65.27 Cr on part of MPRDC/MORTH. Due to the changes in the alignment caused by the faulty DPR, huge variation in the quantities of the earthwork, cutting, crust, road work, structures were observed.

Agreement Chainage		Length
From	To	
198+720	201+400	2680
213+870	215+400	1530
216+500	221+680	5180
222+900	224+140	1240
226+100	227+120	1020
229+860	230+290	430
231+460	231+680	220
235+035	236+180	1145
241+150	242+120	970
Total		14415

4. In terms of the Consultancy Agreement, the DPR Consultant was responsible for the accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as a part of the services. The DPR Consultant is also liable to indemnify the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in services rendered by it.

5. On account of such lackadaisical approach of the DPR Consultant, the Authority also levied financial penalty upon the DPR Consultant under the Consultancy Agreement vide its letter dated 11.05.2022. (cited under Ref. (IV)).

6. In this regard, the relevant clauses of the Consultancy Agreement may be referred to as under:

## **7. Responsibility for Accuracy of Project Documents**

### **7.1 General**

**7.1.1** The Consultants shall be responsible for accuracy of the data collected, by him directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by him as part of these services. He shall indemnify the Authority against any inaccuracy in the work which might surface during implementation of the project. The Consultants will also be responsible for correcting, at his own cost and risk, the drawings including any re-survey/investigations and correcting layout etc. if required during the execution of the Services.

**7.1.2** The Consultants shall be fully responsible for the accuracy of design and drawings of the bridges and structures. All the designs and drawings for bridges and structures including all their components shall be fully checked by a Senior Engineer after completion of the designs. All drawings for bridges and structures shall be duly signed by the (a) Designer, (b) Senior Checking Engineer, and (c) Senior Bridge/Structure Expert. The designs and drawings not



signed by the three persons mentioned above shall not be accepted. The Consultants shall indemnify the Client against any inaccuracy/deficiency in the designs and drawings of the bridges and structures noticed during the construction and even thereafter and the Client shall bear no responsibility for the accuracy of the designs and drawings submitted by the Consultants.

### **7.3. Penalty**

#### **7.3.1. Penalty for Error/Variation**

If variation in any of the main quantities of work like earth work including sub grade, GSB, WMM, Bituminous works (BM/DBM/AC/BC), drains, total concrete quantities and reinforcing steel in bridge works or overall project cost, found during execution is more than +/- 15%, the penalty equivalent to 5% of the contract value shall be imposed. For this purpose retention money equivalent to 5% of the contract value will be forfeited. This shall exclude any addition/deletion of items/works ordered during the execution.

### **7.4 ACTION FOR DEFICIENCY IN SERVICES**

**7.4.1** Consultants liability towards the Client - Consultants shall be liable to indemnify the Client for any direct loss or damage accrued or likely to accrue due to deficiency in service rendered by him.

#### **7.4.2 Warning/Debarring**

In addition to the penalty as mentioned in para 7.3, warning may be issued to the erring Consultants for minor deficiencies. In the case of major deficiencies in the Detailed Project Report involving time and cost overrun and adverse effect on reputation of NHAI, other penal action including debarring for certain period may also be initiated as per policy of NHAI.

#### **Policy matter: Technical (97/2012) dated 17.04.2012**

**2.2.....** In the case of significant deficiencies in services causing adverse effects on the project or on reputation of the Authority, other penal actions including debarring for a specified period shall be Initiated as per this policy. The deterrent penalty action can be taken in any of the following ways:

- i. Issue warning to the consultants as decided by Employer/client.
- ii. Suspend their short-listing with NHAI and debar them from award of future works in NHAI for a period of less than 12 months in case of minor deficiency in services.
- iii. Debarring the consultants for a period of 1 to 5 years for major negligence/deficiency in services.

### **2.3 Financial Penalty**

In addition to any penalty action (i) or (ii) under para 2.2. above, financial penalty of appropriate percentage of contract value can further be imposed. For avoidance of doubt it is clarified that this financial penalty shall form part of penalty action which is in addition to all other actions such as recoveries appropriate of Performance Security, liquidated damages etc. as per the agreement."



7. In this regard, a Show Cause Notice was also issued to the DPR Consultant vide its letter dated 06.10.2021 (cited under Ref. (ii)) seeking an explanation from the DPR Consultant as to why any action should not be taken against the DPR Consultant for its deficiency in service. The DPR Consultant's response to the Show Cause Notice was received by the Authority vide its letter dated 16.11.2021 (cited under Ref. (iii)). The explanations submitted by the DPR Consultant have been thoroughly examined by the Competent Authority and it has been observed that the reasons given by it are unfounded, untenable and unsatisfactory, the assessment of work done by the DPR Consultant was absolutely wrong which led to variation in the cost of Project and it is in clear violation of terms of the Consultancy Agreement. Further, the above stated explanations are also not supported by the material available on record and therefore the said explanations are rejected accordingly.
8. In view of the aforesaid, on account of gravity of the defaults committed by the DPR Consultant which had resulted into major/significant deficiencies in the DPR and caused grievous harm to NHAI's reputation, the Competent Authority of NHAI hereby declares the DPR Consultant as non-performer and debars the Consultant under Clause 7.4.2 of the Consultancy Agreement and Policy Circular dated 17.04.2012 from participation in the future bids of NHAI, MORTH and its executing agencies for the period of 1 (one) year from the date of this Notice.

This notice is being issued without prejudice to the Authority's other rights/ remedies available now or in future under the Consultancy Agreement and the applicable laws of India. Thus, by Issuance of this notice NHAI should not be deemed to have varied, waived, surrendered or abrogated any of its legal and contractual rights in any manner whatsoever.

This issues with the approval of Competent Authority.

Yours' faithfully



Balbir Singh Yadav  
General Manager (T)-MP

Copy to-

- (1) PPS to Secretary M/oRT&H
- (2) Managing Director NHIDCL
- (3) Web-admin for circulation to all
- (4) INFRACON portal