

File No. RW/NH-33044/76/2021-S&R(P&B)
Government of India
Ministry of Road Transport & Highways
(S&R Zone)
No.1, Parliament Street, Transport Bhavan, New Delhi-110001

Date: 7th Oct, 2021

To,

1. The Chief Secretaries of all State Governments/UTs.
2. The Principal Secretaries/Secretaries of all State/UTs PWD dealing with National Highways, other centrally sponsored schemes and state schemes.
3. All engineer-in-Chief and Chief Engineers of all States/ UTs PWD dealing with National Highways, other centrally sponsored schemes and state schemes.
4. The Chairman, National Highways Authority of India (NHAI), G-5&6, Sector-10, Dwarka, New Delhi-110075.
5. The Managing Director, National Highway Infrastructure Development Corporation Ltd., 3rd floor, PTI Building, Parliament Street, New Delhi-110001.
6. Director General (Border Roads), Seema Sadak Bhawan, Ring Road, New Delhi-110010.
7. All CE-ROs, ROs and ELOs of the Ministry.

Subject: Standard operating procedure to debar/penalize/declare as Non-Performer the Authority's Engineer/Independent Engineer/Construction Supervision Consultant/Project management Consultant in National Highways and centrally sponsored road projects.

Ref:

- i. Ministry's letter No. H-39011/30/2015-P&P(Pt-I) dated 15.02.2019: RFP Document for DPR and AE/IE
- ii. Ministry's letter No. RW/NH-24024/02/2019-S&R(P&B) dated 06.01.2021: RFP Document for PMC
- iii. Ministry's letter No. RW/NH-34066/01/2020-QCZ dated 14.06.2021

Sir,

It has been noticed that in many cases there are lapses on the part of the Authority's Engineer (AE)/Independent Engineer (IE)/Construction Supervision Consultant (CSC)/ Project Management Consultant (PMC) in fulfilling their obligations



under the contract as per provisions of contract agreement that lead to delay/acceptance of sub-standard works leading to premature distress/failure during construction.

2. In order to ensure construction of roads as per standard and specifications laid down in contract/concession agreement and to avoid project delays, it has been decided to debar/penalize/declare as Non-Performer the Authority's Engineer (AE)/Independent Engineer (IE)/Construction Supervision Consultant (CSC)/ Project Management Consultant (PMC) for their lapses/deficiencies in services in National Highways and centrally sponsored road projects. It is clarified that such actions of the Authority would be without prejudice to the remedies available to MoRTH under the contract agreement/governing laws.

3. The circular dated 14.06.2021 mentioned at reference (iii) is superseded by this circular and following penal actions shall be taken against the Authority's Engineer/Independent Engineer/ Construction Supervision Consultant/Project management Consultant in case of lapses on their part/deficiencies in services provided.

Sl. No.	Type of Deficiency	Action to be taken against Consultant (IE/AE/CSC/PMC) engaged during construction & maintenance	
		Key Personnel	Firm
1(a)	Failure to detect design/quality deficiency in Non-key Components*	For first three instances, key personnel may be kept on "watch list".	i. For first three instances, to be kept on watch list.
(b)	Failure to issue follow-up notices to contractor/concessionaire for delays in closure of NCRs, delays in furnishing detail of time & cost claims/COS/revised work programmes/work methodologies, etc.	Thereafter, the concerned Key Personnel & Team leader to be removed from the project and debarred up to 6 months	ii. Thereafter, a monetary penalty of 1% of the consultancy fee (the aggregate of such penalties in a contract would not exceed the performance Guarantee amount) and/or declaring the consultant as Non-Performer up to 6 months or till rectification of deficiencies# and taking adequate measures not to repeat such instances in future, whichever is earlier.
(c)	Delays or submission of improper MPRS, improper review of methodologies, temporary works, QA plan/manual, O&M plan/Manual etc.		

2(a)	Failure to detect design/quality deficiency in Key Component** not having substantial cost (below 1% of civil work (cost) and /or time implication (below 5% of project completion period)	The concerned key personnel & Team leader to be removed from the project and debarred up to 1 year	Declaring the Consultant as Non-Performer up to 1 year or till rectification of deficiencies# and taking adequate measures not to repeat such instances in future, whichever is earlier.
(b)	Failure to detect deficiency in quantity executed vis-à-vis design not having substantial financial implication (below 1% of civil work cost)		
(c)	Failure to conduct/witness tests as prescribed in the consultancy contract agreement		
(d)	Delay in processing EOT/COS proposals, inaccurate assessment of COS proposals, not issuing NCRs, delays/improper review of designs/drawings/work programme or failure to submit Completion/Provisional Completion Certification as prescribed in contract		
3(a)	Failure to detect deficiency in quantity executed vis-à-vis design having substantial financial implication (1% of civil work cost or more)	The concerned key personnel & team leader to be removed from the project and debarred up to 2 years.	In addition to rectification of deficiencies and taking adequate measures not to repeat such instances in future, the consultant to be debarred up to 2 years.
(b)	Failure 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)		
(c)	Failure to detect deficiency/not reviewing design (including temporary works) and construction (including methodology) of structural components of flyover/bridges/underpasses/overpasses/ROB/RUB etc.		
(d)	Failure to propose action (like cure period notice, levy of damages, etc.) on contractor/concessionaire as per contract agreement for their default/poor progress having material adverse effect on the project implementation in terms of cost (1% of civil work cost or more) and/ time (5% of project completion period of more).		
(e)	Improper/wrong interpretation of provision in contract agreement; or wrong certification of payment/COS value/cost & time claims; or poor performance of services leading to cost (1% of civil work cost) and/or time (5% of project completion period) claims against MoRTH or its executing agencies awarded by DRB/CCIE/Arbitration/Court.		

Note ** Key Components are specified as under:

- i) Foundation, sub-structure and super-structure of flyovers, road over bridges, road under bridges, vehicular under passes, vehicular over passes, major bridges, minor bridges, etc.



- ii) Tunnels
- iii) Expansion joints and bearings
- iv) RE walls/ retaining walls
- v) The crust layers of flexible pavement
- vi) The crust layers of rigid pavement
- vii) Embankment and slope protection
- viii) Issues affecting road safety
- ix) Any other work endangering/impacting/stability/reliability/durability/performance of pavement/structures

*The items not covered in above list shall be in the category of Non-key Components.

Excluding the delay solely attributable to the contractor beyond stipulated time.

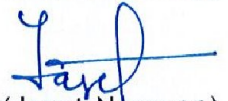
4. Necessary amendments will be made in the provisions of Model Request for Proposal (RFP) for appointment of Authority's Engineer/ Independent Engineer/ Project Management Consultant (PMC.)
5. Before deciding a AE/IE/CSC/PMC as Non-Performer or debarring/penalizing it, the concerned authority shall issue a notice to the AE/IE/CSC/PMC by giving 15 days time to furnish its written reply and allow personal hearing if so desired by the AE/IE/CSC/PMC before the competent authority or any person designated for the purpose. Such a notice shall not be issued without the approval of an officer not below the rank of Chief Engineer/CGM/ED. In case of projects where public safety is endangered by the behavior/conduct/action of the consultant the authority may temporarily suspend the consultant from participating in ongoing/ future bidding upto 1 month period during which the regular process of debarment shall be concluded.
6. The competent authority for approval of penal action as above will be the DG(RD) &SS in respect NH works being implemented through State PWDs.
7. The firm/individuals on which penal/deterrent action is taken may represent to the "Reviewing authority" against the action/penalty imposed. The "Reviewing Authority" shall be the Secretary, RT&H in respect NH works being implemented through State PWDs.
8. NHAI and NHIDCL will designate competent authority for deciding penal action and the Reviewing Authority.
9. Upon declaration of non-performer, the AE/IE/CSC/PMC will not be able to participate in any bid for National Highways projects with MoRTH or any other executing agencies till such time the debarment persists or the AE/IE/CSC/PMC is removed from the list of non-performers. The AE/IE/CSC/PMC shall include its JV partners, promoters etc. whose credentials were considered while qualifying them for

the project. Non-performer/debarment status of a bidder on the bid due date will be the criteria for eligibility of a bidder to participate in the said bid.

10. Each implementing agency shall have a single source/designated officer for maintaining the record/data related to debarment. Ministry's Monitoring Zone with the help of NIC will maintain a real-time data-base of such Non-Performer and debarred contractor/concessionaire.

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

Yours sincerely,



(Jagat Narayan)

Superintending Engineer, S&R (R)
For DG(RD)&SS

Copy to:

1. All Chief Engineers in the Ministry of Road Transport & Highways.
2. The Secretary General, Indian Road Congress, IRC Bhawan, Kama Koti Marg, Sector-6, R.K. Puram, New Delhi-110022.
3. Technical circular File, S&R (P&B) Section.
4. NIC for uploading on the Ministry's website.

Copy for information and necessary action to:

1. Sr.PPS to Secretary (RT&H).
2. PPS to DG(RD)&SS
3. PPS to SS/AS/AS&FA.
4. PS to all ADGs.
5. PS to all JSs.

