

1413267/2020/Technical

F. No. NH-35014/20/2020-H
 Government of India
 Ministry of Road Transport & Highways
 (Highways Section)
 Transport Bhawan, 1, Parliament Street, New Delhi-110001

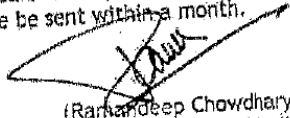
Dated: 4th August, 2020Office Memorandum

Sub: Insertion of Rule 144(xi) in the General Financial Rules 2017 - reg

The undersigned is directed to forward herewith a copy of Department of Expenditure (DoE) O.M. No.6/18/2019-PPD dated 23.7.2020, vide which Rule 144 of the General Financial Rules 2017 entitled 'Fundamental principles of public buying', has been amended by Department of Expenditure by inserting sub-rule Rule 144 (xi) in the General Financial Rules (GFRs), 2017 as under:

Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including National security; no procurement shall be made in violation of such restrictions

2. Subsequently, Department of Expenditure has issued Order (Public Procurement No. 1), vide Order No. No.6/18/2019-PPD dated 23.7.2020, regarding restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017. This Order provide the detail SoP/ Mechanism for application of newly inserted Rule 144 (xi) in the General Financial Rules (GFRs), 2017.
3. Thereafter, Department of Expenditure has issued two Orders i.e Order (Public Procurement No. 2) & Order (Public Procurement No. 3), vide No.6/18/2019-PPD dated 23.7.2020 and 24.7.2020, which provide clarification to the aforesaid Order (Public Procurement No. 1) dated 23.7.2020.
4. It is requested to strictly comply with the aforesaid Orders of Department of Expenditure. A compliance report in the matter may please be sent within a month.


 (Randeep Chowdhary)
 Deputy Secretary to the Government of India

Encl: As above

To

1. Chairman, NHAI
2. DG(RD) & SS, MoRTH
3. MD, NHIDCL
4. JS(General)/ JS(H) / JS(MVL)/ JS(NHIDCL)

Copy for information to: Sr. PPS to Secretary (RT&H) / PPS to AS&FA, MoRTH

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Order (Public Procurement No. 1)

Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

Attention is invited to this office OM no. 6/18/2019-PPD dated 23rd July 2020 inserting Rule 144 (xi) in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 (xi) on the grounds stated therein:

Requirement of registration

1. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in Annex I.
2. This Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of this order; and (ii) cases falling under Annex II.

Transitional cases

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -
 - a) *In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed:* No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
 - b) *If the tendering process has crossed the first exclusionary qualificatory stage:* If the qualified bidders include bidders from such countries, the

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entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

5. Apart from Ministries / Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
- a. to all Autonomous Bodies;
 - b. to public sector banks and public sector financial institutions; and
 - c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
 - d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
 - e. Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

Definitions

6. "Bidder" for the purpose of this Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

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- a) An entity incorporated, established or registered in such a country; or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose *beneficial owner* is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

- (i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.
Explanation—
 - a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
 - b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- (iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- (iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

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(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

10. "Agent" for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Sub-contracting in works contracts

11. In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Validity of registration

13. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.


Government E-Marketplace

14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

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Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as Annex III. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to this Department.


(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js_bfc2.doe@gov.in
Telephone: 011-23093882

To

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Secretary DPIIT with a request to initiate action as provided under Annex I
- (4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

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Annex I: Competent Authority and Procedure for Registration

- A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*.
- B. The Registration Committee shall have the following members*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*.
- H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

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- I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

- i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.
- ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

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Annex II: Special Cases

- A. Till 31st December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.
- B. *Bona fide* procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by this Order.
- C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.
- D. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

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Annex III

Model Clause /Certificate to be inserted in tenders etc.

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose *beneficial owner* is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.
Explanation—
 - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

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"Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the

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Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works Involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

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F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block
New Delhi
23rd July, 2020


Order (Public Procurement No. 2)

Subject: Exclusion from restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017 –regarding.

In Order (Public Procurement No. 1) dated 23rd July 2020, orders have been issued requiring registration of bidders from a country sharing a land border with India in order to be eligible to bid in public procurement.

2. Notwithstanding anything contained therein, it is hereby clarified that the said Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.

3. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.


(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
24th July, 2020

Order (Public Procurement No. 3)

Subject: Clarification to Order (Public Procurement No.1) dated 23rd July 2020

Attention is invited to paragraph 3(b) of the Order (Public Procurement No.1), under the heading "Transitional provisions" which reads as follows:

b) If the tendering process has crossed the first exclusionary qualificatory stage: If the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated de novo. The de novo process shall adhere to the conditions prescribed in this Order.

It is hereby clarified that for the purpose of paragraph 3 (b), "qualified bidders" means only those bidders who would otherwise have been qualified for award of the tender after considering all factors including price, if Order (Public Procurement No. 1) dated 23rd July 2020 had not been issued.

2. If bidders from such countries would not have qualified for award for reasons unconnected with the said Order (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender / start the process de novo.

3. The following examples are given to assist in implementation of the Order.

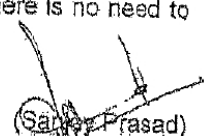
Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.

Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be

qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.

Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.


(Sankar Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform the clarification to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately circulate this clarification among Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

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

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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 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% or 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

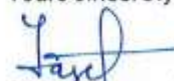


the project. Non-performer/debarment status of a bidder on the bid due date will be the criteria for eligibility of a bidder to participate in the said bid.

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.

National Highways & Infrastructure Development Corporation Limited
3rd Floor, PTI Building, New Delhi-110001

Ref No.: NHIDCL/F&A-25/2019-20/E-182855/fin-024 Dated: 17th April 2023

Order No. 2023/NHIDCL/HR/1496

Office Order

Subject: Mandatory E-BG, EMD and Tender fee Deposit through Induscollect

E-Bank Guarantee

In continuation of office order dated 22nd March 2023, it is intimated that two more banks (Indusind Bank and IDBI Bank) have started issuing Electronic Bank Guarantee (e-BG).

However, the system of getting SFMS confirmations will continue as it existed for physical BGs.

This bears the approval of the Competent Authority.


(Arun Kumar Jain)
General Manager (Fin)

Copy to:

1. All ED (T).
2. PS to MD, NHIDCL for information please.
3. PS to Dir (A&F), for information please.
4. PS to Dir (T), for information please
5. GM(IT) for uploading on the employees portal

Encl: As above

National Highways & Infrastructure Development Corporation Limited
3rd Floor, PTI Building, New Delhi-110001

Ref No.: NHIDCL/F&A-25/2019-20/E-182855/516

Dated: 22nd March 2023

Office Order

Subject: Mandatory E-BG, EMD and Tender fee Deposit through Induscollect

E-Bank Guarantee

An Electronic Bank Guarantee (e-BG) eliminates the physical documentation usually associated with issuance of BG. It reduces the turn-around time of the BG. The digital steps in an e-BG includes BG application, preview and confirm, paperless e-stamping, e-signing, hosting of the final electronic BG on the NeSL portal and intimation of final BG to the beneficiary (e.g NHIDCL). The beneficiary can view the final digital BG on the NeSL portal immediately on issuance. Such an e-BG eliminates the need for a separate authentication from the BG issuing Bank. At present seven banks are issuing E-BG (State bank of India, Canara Bank, Indian Overseas Bank, HDFC Bank, ICICI Bank, Axis Bank and Yes Bank and more may start soon. The Ministry of Road Transport and Highways has prescribed acceptance of E-BGs vide their OM No. NH-35014/20/2020-H dated 12th August 2022.

2. The bidders/contractors/DPR Consultants and Authority Engineers submit BG as bid security, PBG, APBG and BG against advances. It takes time in getting SFMS confirmations and in many cases, the SFMS confirmations are not received.
3. In view of above, the Competent Authority has decided that from first April 2023 only E-BG shall be accepted. No BG shall be accepted in the physical form. The format of the BG will remain the same as prescribed in the RFP documents.
4. Entity ID of NHIDCL is AAECN7759E, which may be quoted for getting e-BG.
5. For any further details, the bidders/contractors may visit the website of National E Governance Services Limited at <https://nesl.co.in/e-bg/>
6. For E-BGs, the IFSC code and name of the bank should be continued to be Canara Bank, Transport Bhawan, Sansad Marg, New Delhi-11001 as given below:

Sr. No.	Particulars	Details
(i)	Name of Beneficiary	MD-NHIDCL
(ii)	Beneficiary Bank Account No	90621010002659
(iii)	Beneficiary Bank Branch	Canara Bank, Transport Bhawan, 1-Parliament Street, New Delhi-110001
(iv)	Beneficiary Bank Branch IFSC	CNRB0019062



Bid Security and Tender fee

7. The bidders will continue to have facility to deposit the bid Security/tender fee into the bank account of the NHIDCL through the online facility provided by the Indusind Bank. **No amount may be deposited directly in the bank account of NHIDCL.** The payment through bank portal will facilitate issuance of invoice for the tender fee and refund of EMD to the unsuccessful bidders immediately on finalization of the bidder.

8. Please refer below steps to do the transaction for payment of EMD and tender fee via Payment Gateway/ generate NEFT/ RTGS challan by visiting website as given below:

Visit IndusCollect website: <https://induscollect.indusind.com/pay/index.php>

Step by Step process is attached as Annexure- I

9. Requisite changes may please be made in the RFP by the Technical Division.

This bears the approval of the Competent Authority.



(Mahesh Gupta)

Dy. General Manager (Fin)

Copy to :

1. All ED (T). *All GM (T), All Dy GM (T)*
2. PS to MD, NHIDCL for information please.
3. PS to Dir (A&F), for information please.
4. PS to Dir (T), for information please
5. GM(IT) for uploading on the employees portal

Encl: As above

Steps for Bidder Payment

1. Visit IndusCollect website: <https://induscollect.indusind.com/pay/index.php>
2. Kindly select one of the two tabs:
 - # Express Payment (For Non-Registered User)
 - # Login (For Registered User)
3. If you are a registered user of IndusCollect, then login click on LOGIN tab. If you are not registered user of IndusCollect then click on Express Payment tab.



c. Select type of payment:

The screenshot shows the IndusInd Bank website interface. At the top, there is a dark header with the bank's name "IndusInd Bank" on the left and "Home | About us | FAQs" on the right. Below the header, there is a navigation bar with "Home > Etendering >". On the right side of the navigation bar, there are three circular icons: "Search" (magnifying glass), "Pay" (Rupee symbol), and "Confirm" (checkmark), with a "< Back" link below them. The main content area features the IndusInd logo and a form titled "I want to make payment to". A dropdown menu is open, showing "Please select" at the top, "CASH" in the middle, and "Tender Fees" at the bottom.

d. Enter Data & Click Submit:

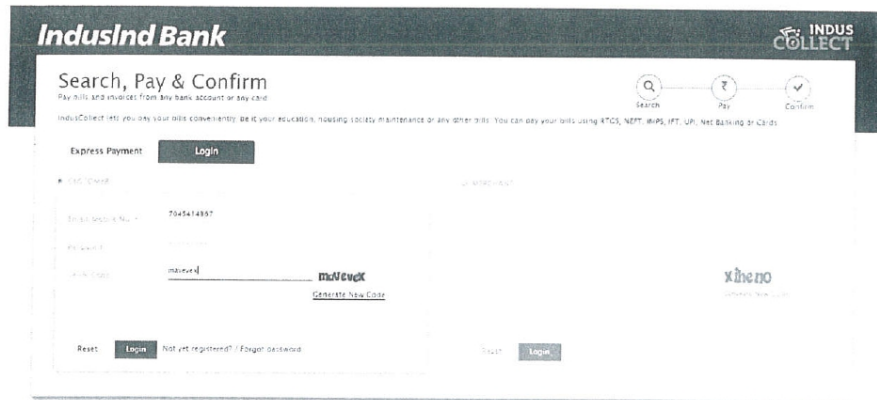
- f. If user clicks “Internet Banking” or “Credit Card” or “Debit Card”, then user will be redirected to Payment Gateway page.
- g. If user selects NEFT or RTGS or IMPS or Transfer within Bank, then:

The screenshot displays a payment gateway interface. On the left, a sidebar contains the following information: Reference No.: 141118173025491, Financial Year: FY 17-18, Department: WCI, Job ID, Please add value, Mobile No.: 7045570455, Email: pandey.p@gmail.com, and Date Amount: 100.00. The main area features a list of payment modes: Internet Banking, Credit Card, Debit Card, and NEFT/RTGS/IMPS/Transfer Within Bank. Under the last option, there are sub-options for NEFT, IMPS, and Transfer within bank. A note states: "Post generation of payment slip please indicate the remittance through you or bank." Below this, a 'Challan Details' section is visible, containing fields for Beneficiary Name, Beneficiary Account, Beneficiary IFSC Code, and Beneficiary Bank. At the bottom, a table shows 'Bank Amount' as ₹. 100.00 and 'Total Amount to be paid' as ₹. 100.00. A 'Generate Payment Slip' button is highlighted with a red circle, and a label 'Click on Generate Payment Slip' points to it.

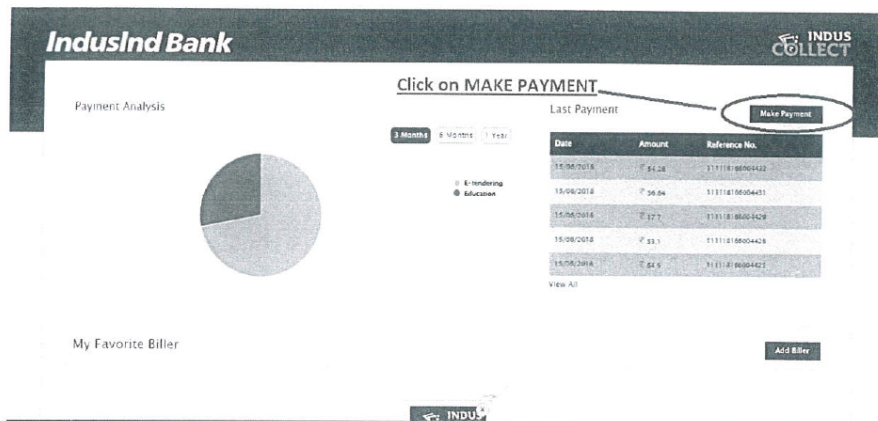
- i. User has to click on Generate Payment Slip to generate challan. It will have beneficiary account number and IFSC code.
- ii. User will then login to their own bank's Netbanking or mobile app.
- iii. User will add beneficiary basis the details on Challan.
- iv. User will then make the payment to beneficiary

Flow for Registered Users

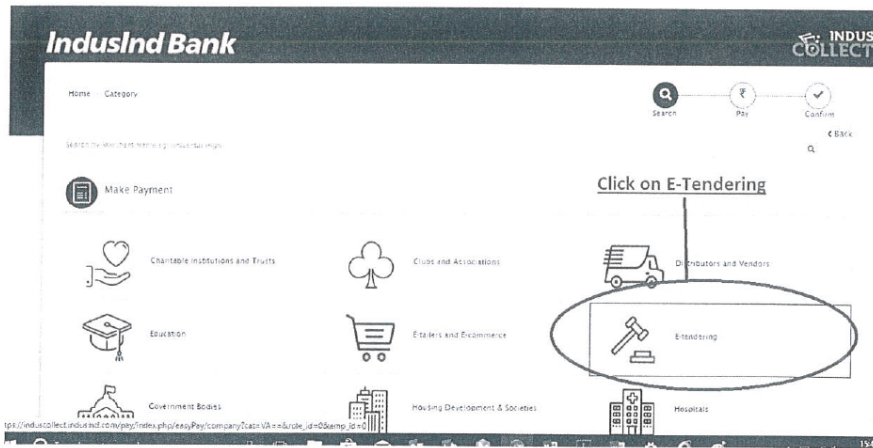
a. Click Login



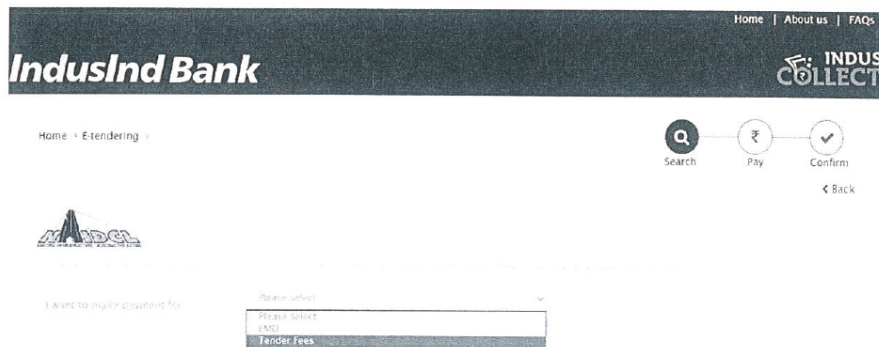
b. Click on MAKE PAYMENT



c. Select Category



d. Type NHIDCL and Select type of Payment:



e. Enter Data & Click Submit:



 Search  Pay  Confirm

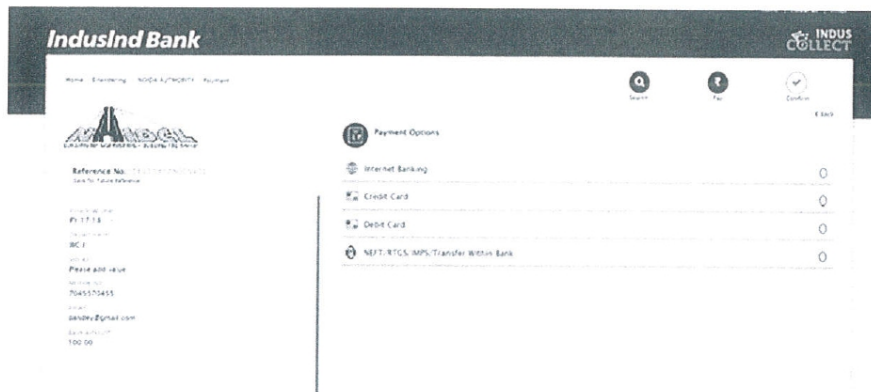
[← Back](#)



I want to make payment for	Tender Fees	▼
Department*		▼
Division*		▼
Job ID*		▼
Tender type*	Please Select Tender type	▼
Contractor Name*	FILL YOUR FIRM/COMPANY NAME	
Mobile No*		
Email*		
Amount*		
Verify Code*		

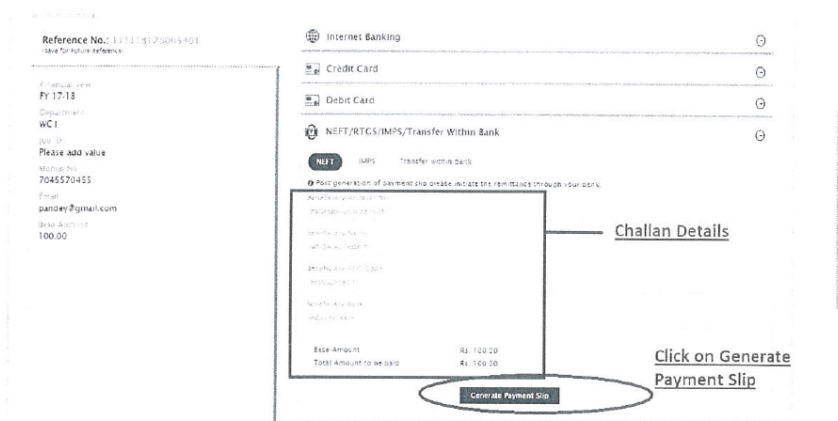

[Generate New Code \(/pay/index.php/easyPay/captcha?refresh=1\)](#)

f. Select the payment mode:



g. If user clicks "Internet Banking" or "Credit Card" or "Debit Card", then user will be redirected to Payment Gateway page.

h. If user selects NEFT or RTGS or IMPS or Transfer within Bank, then:



- i. User has to click on Generate Payment Slip to generate challan. It will have beneficiary account number and IFSC code.
- ii. User will then login to their own bank's Netbanking or mobile app.
- iii. User will add beneficiary basis the details on Challan.
- iv. User will then make the payment to beneficiary

No. COVID-19/RoadMap/JS(H)/2020 (183777)
Government of India
Ministry of Road Transport & Highways
(Highways Section)
Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated: 04 May, 2023

To

1. DG (RD) & SS, Roads Wing, MoRTH
2. The Chairman, NHAI, G-5&6, Sector -10, Dwarka, New Delhi-110075
3. The Managing Director, NHIDCL, PTI Building, New Delhi-110001
3. Principal Secretaries/Secretaries of all States/UTs Public Works Department/ Road Construction Department/ Highways Department (dealing with National Highways and other centrally sponsored schemes)
4. All Engineers-in-Chief and Chief Engineers of Public Works Department/ Road Construction Department/ Highways Department (dealing with National Highways and other centrally sponsored schemes)
5. The Director General Border Roads, Seema Sadak Bhawan, Ring Road, New Delhi-110010
6. All CE-ROs, ROs and ELOs of the Ministry of Road Transport & Highways

Subject: Relief for Contractors/Developers of Road Sector in view of COVID-19 pandemic

Sir,

I am directed to refer to this Ministry's letter of even number dated 26.08.2021, 08.10.2021, 04.01.2022, 11.04.2022 & 01.12.2022 on the subject mentioned above and to convey the approval of the competent authority in this Ministry for further extension of following relief measures for a period of 01 year from 01.04.2023 to 31.03.2024 as under:

- (i) Extension of relaxation in Schedule H/G till 31.03.2024 to improve the liquidity of funds available with the Contractors and Concessionaire.
- (ii) Arrangement regarding direct payment to approved Sub-Contractor through Escrow Account till 31.03.2024 or the completion of the work by the Sub-Contractor, whichever is earlier.
- (iii) Reduction of Performance Security/release of retention money: Performance Security shall be 3% of the value of the contract for all existing contracts (excluding the contracts under dispute wherein arbitration/court proceedings have already been started or are completed). All tenders /contracts issued/ concluded till 31.03.2024 should also have the provision of reduced performance security. However, in order to ensure quality of work being executed, the Ministry will advise all project executing agencies to ensure that in case of abnormally low bids (ALBs), additional performance security is realized as per the latest guidelines provided by Department of Expenditure, Ministry of Finance.

Retention money is a part of the Performance Security till construction period. Hence, release of retention money may be continued in proportion to the work already executed and no reduction of retention money may be made from the Bills raised by the Contractor till 31.03.2024.

For HAM/BOT Contracts, Performance Guarantee may be released on pro-rata basis, as provided in the Contract, if Concessionaire is not in breach of the Contract.

2. The above said relief measures are valid till the mentioned dates unless withdrawn by this Ministry earlier than the date indicated. Implementing agencies are requested to implement the relief measures accordingly.

Yours faithfully,



(Sushant Sudan)

Deputy Secretary to the Government of India
Telephone No. 011-23314316

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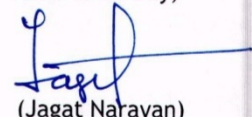
1. Sr. PPS to Secretary (RT&H)
2. AS&FA, MoRTH
3. AS(H&LA)
4. All Joint Secretaries in the MoRTH
5. All ADGs/CEs in the MoRTH
6. Sr. Director (NIC), MoRTH for uploading on the website of the Ministry

recommendation and documentary evidence. The Committee comprising of Zonal Chief Engineer, an Officer of the rank of SE from other Zone and a representative of IFD will further examine the case and give an opportunity to the Consultant for submission of his clarification. After carefully examining the matter with due diligence, the Committee will recommend deterrent action for acceptance of competent authority. NHAI and NHIDCL will create similar mechanism to deal with the complaint/default.

10. Contents of this circular may be brought to the notice of all concerned for immediate compliance.

11. This has been issued with the approval of the Competent Authority.

Yours faithfully,



(Jagat Narayan)

Superintending Engineer (S&R) Roads
For Director General (RD) & SS

Copy to:

1. All ROs/ ELOs of MoRTH and all Technical Officers at MoRTH Headquarter.
2. Secretary General, Indian Roads Congress
3. Director, IAHE, NOIDA
4. PPS to Secretary (RTH), PPS to DG (RD) &SS, PS to AS&FA, PS to ADG- III
5. NIC-with request to upload on the Ministry's portal.

5/5

by the Contractor, failing which Consultancy firm shall be **debarred for a period of two year.**

(iii) In some cases, it is found that MPR are not being prepared properly by the Consultant to reflect the actual progress, hindrances, deployment of resources by the contractor, quality control, Non-conformity reports, safety, fulfilment of obligations of contractor and consultant including approval of various documents, design & drawings. Therefore, it has been decided that Consultant shall record all aspects as per services to be provided in terms of Reference (ToR), failing which the Consultancy firm shall be warned for non-performance. In case Consultancy firm continues to default, even after multiple warning exceeding 5 times, the firm shall be put on holiday listing (temporary debarment) for a period upto 12 months from future assignments by MoRTH or its Executing Agencies.

(iv) In case, person permanently employed with the firm is to be replaced, Technical score of both the CVs shall be compared excluding the marks given for employment with firm. Replacement would be allowed when the Technical Score (excluding the marks given for employment with firm) of the new key person is equal or better than the existing key person's Technical Score **excluding marks assigned for permanent employment with the firm.** However, **the remuneration of such replacement shall be reduced on proportionate basis in case the overall score of the replacement person is less than the overall score of original person.**

7. Following provision shall be incorporated in the RFP documents regarding selection of consultants:

(i) For project involving high complex/downstream consequences/ specialized assignments, i.e. Standalone major Bridges/ Elevated structures, Tunnels, Expressways, a technical weightage of 80/20 may be adopted for selection of Consultants under QCBS.

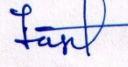
(ii) For project of Moderate complexity, i.e. projects of widening to 2/4 laning, a weightage of 75/25 may be adopted for selection of Consultants under QCBS.

(iii) Provision of Additional Bank Guarantee from selected bidder for low bids is dispensed with.

(iv) In case final DPR and 3D has been submitted and no further action is taken by the employer, the DPR shall be considered as completed after 3 yr and submission of both final DPR and 3D.

8. MoRTH&H and all its implementing agencies will incorporate the provision of this circular appropriately to the RFP of DPR consultant/ Authority's Engineer/Independent Engineer before inviting proposals for a particular consultancy services.

9. Any complaint/ default which comes to the notice shall be examined by concerned Regional Officer and proposal will be submitted to Hqrs with his specific


4/5

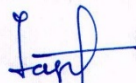
Ownership of equipment in case of Consultancy/Associate Firm is found to be false.	(i) The consultancy/Associate firm, as the case may be, shall put on holiday listing (temporary debarment) for a period upto 12 months.	New Foot note to 'Data Sheet' sub criteria Clause for experience in use of technology shall be added: C. In case, Ownership document of equipment of Consultancy/Associate Firm is found to be false, i) The consultancy/Associate firm, as the case may be, shall be put on holiday listing (temporary debarment) for a period upto 12 months.
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5. The marks for equipment is rationalized and full score be accorded for either of ownership or hire purchase or other option such as leasing as the intent of contract is to get the services of the Consultant for using the equipment for the given assignment.

6. In addition, it is felt necessary to streamline the procedure on the part of both i.e. Consultant as well as Employer for effective performance of various obligations under the Contract and Terms of Reference (ToR), as under:

(i) There has been general delay in approval of replacement of key personnel particularly Team Leader, which is examined at various officers at field level as well as HQ. In order to minimize the delay in approval of such replacements, Consultant shall submit the proposal directly to the competent level responsible for such approvals. The approval for replacement of key personnel shall be accorded within one month of submission of such proposal. In case of further delay, unless refused after due evaluation of CV by the Authority within a month, it will be considered deemed approval of such replacements proposed.

(ii) It has been observed in some of the cases that completion certificate of the project is being issued by Authority's Engineer with retrospective effect and without ascertaining that all the works have been completed as per Specification and Standards, particularly ancillary items like shoulders, road signs, markings, road furniture items etc. Issuance of such completion certificate, besides being a fraudulent activity, leads to financial implication such as payment of Bonus even when the works are not fully completed. Ministry has earlier issued guidelines vide letter dated 22.03.2019 on issuance of completion certificate and further Ministry vide letter dated 25.02.2020 has mandated to upload NSV survey report/ data before issuing completion certificate on PMIS portal. Therefore, the test results on completion including video, NSV survey report/ data and safety audit shall invariably be uploaded on the PMIS portal before issue of completion certificate by the Authority's Engineer after ascertaining that all pre-requisites as per Contract Agreement has been fulfilled


3/5

3. The above matter has been re-examined in MoRTH subsequent to representation received from Association of Consultancy firms and following have been decided:

(i) If any information is found incorrect/fake/inflated in the CV, at any stage, debarment of the key personnel from future MoRTH or its Executing Agencies projects upto 2 years may be taken by MoRTH or its Executing Agencies.

(ii) In case, the information contained in the CV for the duration in which the key personnel was employed by the firm, proposing his candidature is found incorrect/fake/inflated at any stage, action including termination of the consultancy agreement and debarment of the firm upto 2 years from future MoRTH or its Executing Agencies projects shall be taken by MoRTH or its Executing Agencies.

(iii) In case, the information contained in the CV for the duration in which the key personnel was employed by the firm proposing his candidature is found incorrect/fake/inflated at any stage, the consultancy firms shall have to refund the salary and perks drawn in respect of the person apart from other consequences.

(iv) In case, the information contained in the CV for the duration in which the key personnel was not employed by the firm proposing his candidature is found incorrect/fake/inflated at any stage, the consultancy firms **will have to refund the twice of salary and perks drawn in respect of the person.**

The above modification, henceforth, shall be incorporated in RFP document by replacing respective portion of (A) clause 3.4.X (a) / (b) / (c) and 3.4.X (g) of Section 2 (Letter of Invitation) & clause 9 of Section 7 [Draft form of contract] for appointment of Authority's Engineer/ Independent Engineer and (B) clause 3.2.4 (i) of Letter of Invitation for appointment of DPR consultant.

4. Furthermore, it has been decided to penalize the consultant for some other defaults which are not stipulated in the RFP/ Contact Agreement, as per following:

Type of default	Action against Consulting Firm	Addition of clause in RFP document
Consultancy Firm's experience/ document is found to be false at any stage i.e. from bidding to completion of services.	The Consultancy contract shall be terminated and consultant firm shall be debarred for a period of 2 years.	New clause 3.4.xiii to be added: In case, consultant Firm's experience/ document is found to be false at any stage i.e. from bidding to completion of services, the Consultancy contract shall be terminated and consultant firm shall be debarred for a period of 2 years.

Jay

2/5

File No.RW/NH-33044/24/2020-S&R (P&B)
Government of India
Ministry of Road Transport & Highways
(S&R-Quality Control Cell)
No.1, Parliament Street, Transport Bhavan, New Delhi-110001

Dated: 6th January, 2021

To,

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

Subject: Policy guidelines on action against the consultancy firm and key personnel for misrepresentation of facts & fraudulent practices and non-performance.

Reference: MoRTH letter Nos. RW/3901/30/2015-P&P (Pt-I) dated 15.02.2019

Madam/Sir,

Ministry of Road Transport & Highways, vide above referred letter had circulated Request for Proposal (RFP) document for appointment of consultancy services for preparation of DPR, Authority's Engineer and Independent Engineer in respect of National Highways and centrally sponsored works.

2. The RFP document inter-alia requires submission of detail information of each Key Personnel in the specified CV format by the Constancy firm for general qualification, adequacy for the Project and years with the firm, which also include position held in various assignments alongwith total experience against the requirements specified in TOR for the respective key position. The RFP further prescribes following penal action if the information furnished in the CV is incorrect:

(i) If any information is found incorrect, at any stage, action including termination and debarment from future projects of MoRTH or its Executing Agencies upto 2 years may be taken by MoRTH or its Executing Agencies on the personnel and the firm.

(ii) In case CV of a person is turned out to be fake/incorrect/inflated during the assignment, the consultancy firms shall have to refund the salary and perks drawn including interest @12% per annum in respect of the person apart from other consequences. In addition to above, 10% of the salary and perks to be refunded shall be recovered from the Firm as penalty.



Y/S

3. The above matter has been re-examined in MoRTH subsequent to representation received from Association of Consultancy firms and following have been decided:

(i) If any information is found incorrect/fake/inflated in the CV, at any stage, debarment of the key personnel from future MoRTH or its Executing Agencies projects upto 2 years may be taken by MoRTH or its Executing Agencies.

(ii) In case, the information contained in the CV for the duration in which the key personnel was employed by the firm, proposing his candidature is found incorrect/fake/inflated at any stage, action including termination of the consultancy agreement and debarment of the firm upto 2 years from future MoRTH or its Executing Agencies projects shall be taken by MoRTH or its Executing Agencies.

(iii) In case, the information contained in the CV for the duration in which the key personnel was employed by the firm proposing his candidature is found incorrect/fake/inflated at any stage, the consultancy firms shall have to refund the salary and perks drawn in respect of the person apart from other consequences.

(iv) In case, the information contained in the CV for the duration in which the key personnel was not employed by the firm proposing his candidature is found incorrect/fake/inflated at any stage, the consultancy firms will have to refund the twice of salary and perks drawn in respect of the person.

The above modification, henceforth, shall be incorporated in RFP document by replacing respective portion of (A) clause 3.4.X (a) / (b) / (c) and 3.4.X (g) of Section 2 (Letter of Invitation) & clause 9 of Section 7 [Draft form of contract] for appointment of Authority's Engineer/ Independent Engineer and (B) clause 3.2.4 (i) of Letter of Invitation for appointment of DPR consultant.

4. Furthermore, it has been decided to penalize the consultant for some other defaults which are not stipulated in the RFP/ Contact Agreement, as per following:

Type of default	Action against Consulting Firm	Addition of clause in RFP document
Consultancy Firm's experience/ document is found to be false at any stage i.e. from bidding to completion of services.	The Consultancy contract shall be terminated and consultant firm shall be debarred for a period of 2 years.	New clause 3.4.xiii to be added: In case, consultant Firm's experience/ document is found to be false at any stage i.e. from bidding to completion of services, the Consultancy contract shall be terminated and consultant firm shall be debarred for a period of 2 years.

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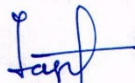
Ownership of equipment in case of Consultancy/Associate Firm is found to be false.	(i) The consultancy/Associate firm, as the case may be, shall put on holiday listing (temporary debarment) for a period upto 12 months.	New Foot note to 'Data Sheet' sub criteria Clause for experience in use of technology shall be added: C. In case, Ownership document of equipment of Consultancy/Associate Firm is found to be false, i) The consultancy/Associate firm, as the case may be, shall be put on holiday listing (temporary debarment) for a period upto 12 months.
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5. The marks for equipment is rationalized and full score be accorded for either of ownership or hire purchase or other option such as leasing as the intent of contract is to get the services of the Consultant for using the equipment for the given assignment.

6. In addition, it is felt necessary to streamline the procedure on the part of both i.e. Consultant as well as Employer for effective performance of various obligations under the Contract and Terms of Reference (ToR), as under:

(i) There has been general delay in approval of replacement of key personnel particularly Team Leader, which is examined at various officers at field level as well as HQ. In order to minimize the delay in approval of such replacements, Consultant shall submit the proposal directly to the competent level responsible for such approvals. The approval for replacement of key personnel shall be accorded within one month of submission of such proposal. In case of further delay, unless refused after due evaluation of CV by the Authority within a month, it will be considered deemed approval of such replacements proposed.

(ii) It has been observed in some of the cases that completion certificate of the project is being issued by Authority's Engineer with retrospective effect and without ascertaining that all the works have been completed as per Specification and Standards, particularly ancillary items like shoulders, road signs, markings, road furniture items etc. Issuance of such completion certificate, besides being a fraudulent activity, leads to financial implication such as payment of Bonus even when the works are not fully completed. Ministry has earlier issued guidelines vide letter dated 22.03.2019 on issuance of completion certificate and further Ministry vide letter dated 25.02.2020 has mandated to upload NSV survey report/ data before issuing completion certificate on PMIS portal. Therefore, the test results on completion including video, NSV survey report/ data and safety audit shall invariably be uploaded on the PMIS portal before issue of completion certificate by the Authority's Engineer after ascertaining that all pre-requisites as per Contract Agreement has been fulfilled


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by the Contractor, failing which Consultancy firm shall be **debarred for a period of two year.**

(iii) In some cases, it is found that MPR are not being prepared properly by the Consultant to reflect the actual progress, hindrances, deployment of resources by the contractor, quality control, Non-conformity reports, safety, fulfilment of obligations of contractor and consultant including approval of various documents, design & drawings. Therefore, it has been decided that Consultant shall record all aspects as per services to be provided in terms of Reference (ToR), failing which the Consultancy firm shall be warned for non-performance. In case Consultancy firm continues to default, even after multiple warning exceeding 5 times, the firm shall be put on holiday listing (temporary debarment) for a period upto 12 months from future assignments by MoRTH or its Executing Agencies.

(iv) In case, person permanently employed with the firm is to be replaced, Technical score of both the CVs shall be compared excluding the marks given for employment with firm. Replacement would be allowed when the Technical Score (excluding the marks given for employment with firm) of the new key person is equal or better than the existing key person's Technical Score **excluding marks assigned for permanent employment with the firm.** However, **the remuneration of such replacement shall be reduced on proportionate basis in case the overall score of the replacement person is less than the overall score of original person.**

7. Following provision shall be incorporated in the RFP documents regarding selection of consultants:

(i) For project involving high complex/downstream consequences/ specialized assignments, i.e. Standalone major Bridges/ Elevated structures, Tunnels, Expressways, a technical weightage of 80/20 may be adopted for selection of Consultants under QCBS.

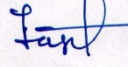
(ii) For project of Moderate complexity, i.e. projects of widening to 2/4 laning, a weightage of 75/25 may be adopted for selection of Consultants under QCBS.

(iii) Provision of Additional Bank Guarantee from selected bidder for low bids is dispensed with.

(iv) In case final DPR and 3D has been submitted and no further action is taken by the employer, the DPR shall be considered as completed after 3 yr and submission of both final DPR and 3D.

8. MoRTH&H and all its implementing agencies will incorporate the provision of this circular appropriately to the RFP of DPR consultant/ Authority's Engineer/Independent Engineer before inviting proposals for a particular consultancy services.

9. Any complaint/ default which comes to the notice shall be examined by concerned Regional Officer and proposal will be submitted to Hqrs with his specific

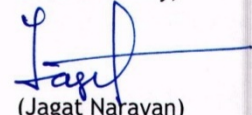

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recommendation and documentary evidence. The Committee comprising of Zonal Chief Engineer, an Officer of the rank of SE from other Zone and a representative of IFD will further examine the case and give an opportunity to the Consultant for submission of his clarification. After carefully examining the matter with due diligence, the Committee will recommend deterrent action for acceptance of competent authority. NHAI and NHIDCL will create similar mechanism to deal with the complaint/default.

10. Contents of this circular may be brought to the notice of all concerned for immediate compliance.

11. This has been issued with the approval of the Competent Authority.

Yours faithfully,



(Jagat Narayan)

Superintending Engineer (S&R) Roads
For Director General (RD) & SS

Copy to:

1. All ROs/ ELOs of MoRTH and all Technical Officers at MoRTH Headquarter.
2. Secretary General, Indian Roads Congress
3. Director, IAHE, NOIDA
4. PPS to Secretary (RTH), PPS to DG (RD) &SS, PS to AS&FA, PS to ADG- III
5. NIC-with request to upload on the Ministry's portal.

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