

NHIDCL/RO-Imphal/SR/C-T/Km 9.00- Km 70.00/2020/867

Date: 27/10/2020

To

M/s S. Hungyo
Marcy Lane, Mantripukhri
Imphal East District, Manipur

(Kind Attn: Mr. S. Hungyo, Authorised Signatory)

Sub: Restoration/Rehabilitation of Churachandpur-Tipaimukh Road (NH-150) km 9.00 to 70.00 (Total Length -61 km) in the state of Manipur- **Termination of Contract - reg.**

Sir,

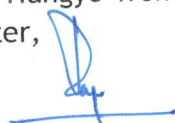
The subject project was awarded to M/s S. Hungyo with appointed date declared as 03.08.2020.

2. Whereas, the EPC contractor was issued Letter of Award in pursuant to clause -2.21 of Section-II of RFP document, M/s S. Hungyo was directed to submit Bank Guarantee for an amount of Rs. 91,84,543/- (Rs. 71,00,000/- i.e. equivalent to 5% of the total Contract Value plus Additional Performance Security of Rs. 20,84,543/- as per clause 2.21 of RFP document) towards Performance Security within 30 days of issue of this LOA.

3. Whereas, NHIDCL has issued a circular no. NHIDCL/HR/Atmanirbhar Bharat/2020/185330/621 dated 24.07.2020 vide which contract agreement was to be signed with the selected contractors without submission of PBGs, for this purpose, an undertaking was to be taken from the contractor and till 30.09.2020 the contractor was required to furnish the requisite PBG. Accordingly, contract agreement with M/s S. Hungyo was signed on 31.07.2020 based on the aforesaid circular.

4. Whereas, M/s S. Hungyo vide its letter dated 19.09.2020 has submitted two Bank Guarantees No. 264GT02172692909 amounting to Rs. 71,00,000/- & 264GT02172692910 amounting to Rs. 20,84,543/- against Performance Security and Additional Performance Security, respectively, issued by Manipur Rural Bank, Imphal Branch for the subject work.

5. Whereas, NHIDCL RO-Imphal vide its letter dated 21.09.2020 has sought confirmation in regard to above mentioned Bank Guarantees by M/s S Hungyo from the issuance bank i.e. Manipur Rural Bank, Imphal Branch. In reply to our letter,



Manipur Rural Bank vide its email dated 24.09.2020 has confirmed that Manipur Rural Bank, has not issued the given bank Guarantees.

6. Whereas, Physical verification of the said BG's were also done by NHIDCL RO-Imphal by visiting the Bank in person on 29.09.2020, Branch Manager Manipur Rural Bank, Imphal Branch has informed that the BG's were not issued by their bank and are fake.

7. Whereas, NHIDCL-RO-Imphal, in terms of Section 4 of the RFP, NHIDCL RO Office vide its letter dated 29.09.2020 issued a show cause notice to the Contractor seeking written explanation that as to why action of criminal proceedings, termination of the Contract and Debarment should not be initiated against the Contractor.

8. Whereas, an email dated 01.10.2020 was received from M/s S. Hungyo wherein it was written to Manipur Rural Bank that they had not replied to the queries of NHIDCL regarding issuance of the Bank Guarantees issued by them against PBG & APBG of the subject work.

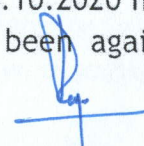
9. Whereas, vide email dated 03.10.2020 Manipur Rural Bank submitted to RO-Imphal that they apologies for the delay in replying and informed that they are discussing the issue of issuance of Bank Gurantees and will update NHIDCL RO-Imphal shortly. They further informed to ignore the previous mail sent to NHIDCL RO-Imphal by them.

10. Whereas, M/s S. Hungyo vide email dated 04.10.2020 submitted that due to COVID-19 Pandemic, Bank was functioning with skeleton staff only for basic banking activities, hence they could not discuss the matter regarding Bank Guarantee with the concerned staff and they requested for extra time till 14.10.2020. However, vide email dated 05.10.2020 NHIDCL RO-Imphal has directed M/s S. Hungyo to submit reply to the Notice issued to them within the stipulated time period only.

11. In response to letter dated 29.09.2020 issued by RO Office, NHIDCL, the Branch Manager of Manipur Bank vide its letter dated No. MRB/IMP/BG/2020-21 dated 05.10.2020 has stated that *"We are to inform you that the above said Bank Guarantees for Rs.71,00,000/- valid upto 18.09.2020 and Rs.20,84,543/- valid up to 17.9.2022 were not issued from our end."*

12. Whereas, vide email dated 06.10.2020, Manipur Rural Bank has directly submitted new Bank Guarantee Nos. 900120ILPER0002 dated 6.10.2020 amounting to Rs.71,00,000/- and BG No. 900120ILPER0002 dated 6.10.2020 amounting to Rs.20,84,543/- respectively for the subject work.

13. Whereas, M/s S. Hungyo vide letter dated 06.10.2020 has submitted their reply towards the Show Cause Notice, wherein it has been again reiterated by M/s S.



Hungyo that due to COVID-19 Pandemic, bank was functioning with skeleton staff only for basic banking activities and during that they requested the Bank to give the requisite BG's for the subject work. However, Manipur Rural bank, Imphal Branch issued BG's without updating/system generated, as a result on inquiry from NHIDCL system does not recognize the issued BG's.

14. Whereas, M/s S. Hungyo further submitted that after issuance of NHIDCL Show Cause Notice dated 29.09.2020, Manipur Rural Bank was confronted by them after which Bank realized their fault and apologized to them and even drop a mail to NHIDCL RO-Imphal. Moreover, after realizing their fault bank has changed a whole lot of things in the already submitted BG's and eventually issued 2 new BG's against PBG & APBG for the subject work. The new BG's in original was submitted by M/s S. Hungyo along with their reply to the Show Cause Notice of NHIDCL- RO-Imphal.

15. Whereas, M/s S. Hungyo on 07.10.2020 visited NHIDCL RO- Imphal office and submitted original copy of their reply and represented their case and again submitted that they are not at fault as Manipur Rural bank has issued the BG's without entering in their system.

16. Whereas, Manipur Rural Bank vide its email dated 08.10.2020 had submitted its letter dated 05.10.2020, wherein it was again submitted by them that the said BG's are not issued by their branch.

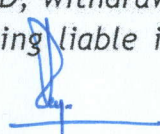
17. WHEREAS, the above facts clearly proves that the submitted Bank Guarantees are fake and moreover bolstered by the fact that a fresh BG's in lieu of the fake BG's were submitted by the Contractor on 06.10.2020.

18. AND WHEREAS, submission of a fake bank guarantee by the Contractor amounted to fundamental breach of the Contract and accordingly in exercise of its contractual rights, the NHIDCL has decided to terminate the Contract in pursuant to section 4 of the RFP document.

19. AND WHEREAS, in terms of the bid documents read with the Contract Agreement and the applicable law of the land, the NHIDCL is empowered to seek further action against the Contractor for having indulged in such fraudulent act. In this regard, section 4 of the RFP document may also be referred to which is read as under:

"SECTION-4 FRAUD AND CORRUPT PRACTICES

"4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a BID, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it



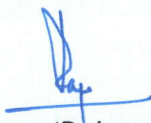
determines that the Bidder , directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the BID security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.

4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2(two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, under, undesirable practice or restrictive practices, as the case may be."

20. After examination of the reply received from the Contractor as well as taking into consideration the other relevant facts in the present matter, the competent authority of NHIDCL is of the view that the Contractor M/s. S. Hungyo has engaged in the fraudulent practice and in accordance with SECTION-4 FRAUD AND CORRUPT PRACTICES of the RFP document, the subject contract is hereby terminated with immediate effect.

21. It may be noted that NHIDCL shall be at liberty to take such other and further steps as per the Contract and applicable laws.

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


(Rajeev Sood)
Executive Director
RO-Imphal

Copy To:

- (i) ED (V), HQ NHIDCL New Delhi
- (ii) DGM (T) Manipur, HQ NHIDCL Manipur
- (iii) DGM (P) Churachandpur .