

INFRASTRUCTURE CONSULTANTS ASSOCIATION OF INDIA



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Ref :- ICAI/Hon'ble MP/Kanpur/2020-21/65

Date - 3-07-2020

To,
Shri Satyadev Pachauri
Hon'ble MP Kanpur
117/L/89, Naveen Nagar
Kakadev, Kanpur-208025

Sub: Changes required in Policy of Punishing Consultants on Furnishing False Information by the Proposed Key Personnel in the bids invited by National Highways Authority of India.

Hon'ble Sir,

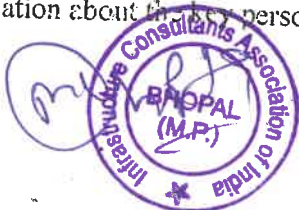
We the Association of Consultants which have been formed to collectively raise the issues of concern of its members under the name "Infrastructure Consultants Welfare Committee". We have more than 110 members on its role with our registration No.01/01/01/24544/12 dated 07.01.2012. We are also actively involved in providing guidance and resources to young consulting engineers and architects through various training programs and organizing workshop and actively contributing to the national building.

In recent times many of our member consultants have raised issue of imposition of arbitrary punishment to them under the provision of Clause 3.4 of Section-2 Letter of Invitation to Consultants of RFP of NHAI varying from financial penalty of few lakhs to deterrent penalty of debarment. This clause relates to composition of proposed staff team and submission of their respective CV in the prescribed format. This format is required to be signed by both the proposed professional staff and head of the consulting firm. Clause 3.4 Section-2 Letter of Invitation to Consultants of RFP states besides qualification and experience of the key person as follows:

Clause 3.4.

"If any information is found incorrect, at any stage, action including termination and debarment from future NHAI projects upto 2 years may be taken by NHAI on the personnel and the firm".

Needless to mention that it is incumbent upon the consultant to choose the key personnel from the INFRACON portal for proposing their names in the tender offers for various positions required in the given RFP. Few key personnel upload wrong information about their qualification and experience on the portal while the consultants generally do not have any medium to verify the correctness/veracity of details uploaded by the key personnel. The consultant proposes the names in prescribed format given in RFP and signs the following undertaking as per the mandatory provision in every RFP with regard to certification of the proposed key personnel without knowing the authenticity/genuineness of the information about the key personnel.



Certification by the Firm : The undersigned on behalf of -----(name of consulting firm) certify that Shri----- (name of proposed personnel) to the best of our knowledge has neither been debarred by NHAI nor left his assignment with any other consulting firm engaged by NHAI /Contracting firm (firm to be supervised now) for the ongoing projects. We understand that if the information about leaving the past assignment is known to NHAI, NHAI would be at liberty to remove the personnel from the present assignment and debar him for an appropriate period to be decided by NHAI.

Now during technical evaluation of the offers submitted by the consultants if the authorities detect that any of the proposed key personnel submitted fake or forged documents or misrepresented on his experience or qualification in the CV then the clarification of the consultants is asked and deterrent action on the consultant varying from financial penalty to debarment for a year or two is contemplated according to frequency of such misconducts by the key personnel by the proposal consultant. There are no other mode available for the consultancy firm to verify the authenticity of documents submitted by any of the key personnel.

Now the larger question of arbitrary award of punishment to the consulting firm on the misdeeds of key personnel is bonafidely correct or not. Most of the consulting firm feel that it is draconian provision which cast the liability of someone to others which others cannot be held responsible. This provision in the Clause 3.4 Section-2 Letter of Invitation to Consultants of RFP is contrary to the Principle of Natural Justice and the Law of Fairness. The fellow members of our association are actively taking part in the development of infrastructure of the country and therefore they should get relief from such provisions over which they have no control and appropriate action for rectification of biased and unfair clause should be taken.

You are therefore requested to kindly advise the appropriate authority to take remedial measures to review the provisions of said Clause 3.4 Section-2 Letter of Invitation to Consultants of RFP and modify it to the extent that guilty key personnel should be punished on detection of fraud/misrepresentation in their qualifications and experiences. Accordingly debarment /punishment should be decided against the guilty key personnel only.

We hope that your goodself will kind enough to intervene in the matter and will take appropriate action to rectify and review the said clause and remove the existing anomaly. We accordingly pray to your kindness that modification in the relevant portion of clause 3.4 may be made as follow:

1. The guilty key personnel should be debarred for a period upto 2 years.
2. The consulting firm should be disqualified/debarred, only if it has found to be indulged in any other form of fraudulent practices i.e. wrong furnishing of turnover and company's experience details.

With Warm Regards,

Thanking you, .

Yours sincerely,

For Infrastructure Consultants Association of India

(Secretary)

