

KERALA WATER AUTHORITY

PROCEEDINGS OF THE SUPERINTENDING ENGINEER, KWA, PH CIRCLE MALAPPURAM

(Present: V. Prasad)

Sub: KIIFB Project: Tranche 13: WRD004-02- improvements to WSS of Kondotty Municipality- Phase-II-Package IIIA-Laying distribution system for Zone 1,2 &3 and laying transmission main to various service reservoirs - **Termination of contract** -Reg

No: SE/PHC/MPM/DB1/1916/2019

Dated: 10.10.2022

- Ref: 1. AS No: WRD 004-02/APR-6/2019/KIIFB, Dated 25.06.2019 for Rs.108.69 Cr.
2. T.S No: 5127/2019-20, Dated 05.11.2019 of Chief Engineer (NR), Kozhikode.
3. This office Tender No. SE/PHC/MPM/09/2019-20, dated -07.11.2019.
4. This office Work Order Even No. dated -13.03.2020.
5. This office Agreement No. SE/PHC/MPM/01/2020-21 dated :03.04.2020.
6. Judgement of the Hon'ble High Court of Kerala WP © No. 18521/2022 dt.22.06.2022.

ORDER

The Administrative Sanction and Technical Sanction for the subject work were accorded vide reference 1st and 2nd cited for Rs. 108.69 Crore and 37.62 Crore respectively. The work was tendered and being the lowest among the two participants, the work was awarded to Sri. Zubair V, Cheruparamblil House, Kodoor PO, Mangattupulam, Malappuram District - 676504 vide reference 4th cited and executed agreement vide reference 5th cited above.

As per Work order condition the period of completion of the work was 12 months from the date of work order. But the contractor could not complete the work within the scheduled period due to non-getting PWD and NH permission. The period of completion of this work was extended up to 12.12.2021 and then up to 12.06.2022 without imposing fine as per the recommendation of the Executive Engineer, Project Division, Malappuram.

Even though the period extended two times, the contractor could not complete the work due to the non-availability of PWD and NH permission. The contractor had filed a petition before the Hon'ble High court of Kerala vide WP© No. 18521/2022 for exempting him from this work due to non-getting PWD and NH road cutting permission to complete the work.

As per the interim order of the Hon'ble High court of Kerala, direction was issued to appear before the nodal officer mediation center on 29.07.2022 to take decision regarding the

issues. Even though the meeting convened on the same day no one from NHAI side attended the mediation and no solution arrived regarding the dispute and again the matter has been placed before the Hon'ble High Court of Kerala for further direction.

As per the order dated 16th September 2022 the Hon'ble High Court directed respondent 3rd and 4th to convene a meeting with the petitioner within 2 weeks and to take a positive decision on the petitioner's demand for terminating the contract without his risk and cost. Subsequently a notice has been issued to the contractor to attend the meeting on 10.10.2022 at 10AM.

The contractor has represented that as per NIT and schedule laying was to be done by open trench method. In between the road which was under the PWD, NH has been taken over by NHAI. NHAI has given permission only by HDD method which was not under the scope of his contract. He also represented that he has quoted the work at estimate rate and due to the delay in getting permission, the cost of execution has gone up.

KWA had taken all steps to obtain permission from PWD NH. For this purpose, the requisite license fee of Rs. 96,89,328/- was remitted to the NH authorities on 16/02/2021 through Bharathgosh Portal and the Bank guarantee of Rs. 41.78 Lakhs furnished the Executive Engineer, PWD NH Division, Malappuram on 22.07.2021. But the PWD NH Division vide letter No: A5/KWA/30/PMNA/17 dated. 06/10/2021 informed the Executive Engineer, Project Division, KWA, Malappuram, that the road has been handed over to NHAI for development works. The Bank guarantee for Rs.40.78 Lakhs was returned by PWD NH but the license fee is still with NH Authority.


The Executive Engineer, Project Division, KWA, Malappuram was submitted a fresh proposal to NHAI vide letter No. DB2/Proj/1500/2018, Vol III on 21/11/2021 along with all requested documents. The issue was personally discussed with the Project Director NHAI Palakkad on 23/11/2021 at his chamber by Assistant Executive Engineer, KWA, Project Division, Malappuram. But the Project Director has informed that as per the prevailing norms of NHAI open trenching requested by KWA will not be allowed in NHAI roads and HDD method should be resorted to. Hence a variation statement and revised estimate in cooperating HDD method for laying pipes along NHAI was submitted to the Chief Engineer (NR), KWA and the Chief Engineer Northern Region vide letter number KWA/CE/NR/D5M/13310/2019/Package V/A dt. 22/03/2022 has approved the revised proposal. However, no permission was given by NHAI. Hence the contractor has approached the Hon'ble High Court to terminate the contract without risk and cost. Now the NHAI has admitted the proposal by HDD method on 16/09/2022 and asked KWA to remit a license fee of Rs.40,58,406/- and unconditional BG for an amount of Rs. 20,15,500 for further processing.

The Contractor Sri. Zubair V. was not willing to carry out the work by HDD method as this was not covered under his scope of work. Further the DI pipes and PVC pipes originally proposed cannot be laid by HDD method, for that HDPE pipes are to be additionally procured. For this deviation sanction from KJIFB has to be obtained.

Under the above circumstances and in light of the judgement dated. 16/09/2022 of the Hon'ble High Court in WP @ No.18521/2022, sanction is here by accorded to terminate the contract without the risk and cost. The contractor should carry out all other works included in the original contract other than works along NH 966 satisfactory. The Executive

Engineer, Project Division, Malappuram is directed to arrange the balance work as per the norms laid down by the NHAI so that the scheme can be commissioned without further delay.

In view of the orders above, the direction of the Hon'ble High court in the Judgment read above are fully complied with.



SUPERINTENDING ENGINEER

To

Sri. Zubair .V, Cheruparamblil (H), Kodur PO, Malappuram.
The Standing Council, High Court of Kerala (Kerala Water Authority), Ernakulam.
The Executive Engineer, Project Division, Malappuram.

- Copy submitted to the Chief Engineer (NR), Kerala Water Authority, Kozhikode.