

**CONTRACT MONITORING CONSULTANT
TERMS OF REFERENCE**

1. BACKGROUND

- 1.1 Haryana Rail Infrastructure Development Corporation (HRIDC) is a Joint Venture of Government of Haryana (GOH) and Ministry of Railway (MOR) having share of 51% and 49% respectively. The JV has a mandate to take up planning and implementation of various rail infrastructure projects like new railway lines, last mile connectivity, capacity enhancement works etc. in the state of Haryana.

HRIDC, Haryana State Industrial & Infrastructure Development Corporation (HSIIDC), Gurugram Metropolitan Development Authority (GMDA), Maruti Suzuki India Ltd (MSIL) & All Cargo Logistics Ltd (ACL) have joined together to form a Special Purpose Vehicle (SPV) under the name & Style of Haryana Orbital Rail Corporation Limited (HORCL).

HORCL is executing Haryana Orbital Rail Corridor Project which connects Palwal to Sonipat via Sohna, Manesar and Kharkhoda is a broad gauge double railway line for passenger and freight traffic. It will provide seamless connectivity to Dedicated Freight Corridors (DFC) at Prithla station and to Indian Railways at Palwal, Patli, Sultanpur, Asaudah and New Harsana Kalan stations. The alignment of this project is mostly along the KMP expressway along the inner side (i.e., towards Delhi). Total length of the project is approximately 147 Route Km (including connectivity) & about 95 Km alignment runs parallel to KMP. The project is funded by AIIB and counterpart funds through equity partners.

- 1.2 The Works to be executed under Package C-4 of HORC project is for design and construction of twin tunnel and General Electrical Services work on 'Design Build' basis and crosses Aravalli Range between Sohna and Dhulawat stations from Ch.24850 m to Ch.29580 m. It involves tunnelling by NATM method and Cut and Cover method. The scope of work also includes design and construction of embankment, bridges and other miscellaneous works from Ch. 12000 m to Ch. 18000 m.
- 1.3 RITES in consortium with SMEC is the General Consultant (GC) for HORC Project. The services of General Consultant include among other things critical study of DPR, bid process management for selection of Contractors, Suppliers, Proof checking of Detailed Design, Project Management, monitoring and supervision.
- 1.4 Being a Multilateral Development Bank (MDB) funded project, No Objection is issued by AIIB for award of the C-4 Contract. The Contractor selected for C-4 Package is Rail Vikas Nigam Limited (RVNL). RITES and RVNL are both State-Owned Enterprises (SOEs) under the Ministry of Railways.

One of the issues flagged by the AIIB is that as both GC and RVNL are SOEs, there is a requirement of an additional due-diligence for ensuring that both fulfil their contractual

obligations. While issuing the No Objection Letter for award of the Contract to RVNL, Bank has stipulated engagement of contract monitor for C-4 package.

2. PERIOD OF ENGAGEMENT

The Consultant shall be engaged purely on contractual basis for a period of four (4) years from the date of appointment of Consultant. The contractual engagement unless extended shall be terminated automatically at the end of contractual period. In no case the contract shall be extended beyond the closure of the project.

This Contract shall come into force and effect on the date (the “Effective Date”) of the HRIDC notice to the Consultant instructing the Consultant to begin carrying out the Services.

3. TERMS OF REFERENCE

Terms of Reference (ToR) are drafted for an individual consultant (hereinafter referred as “the Consultant”) in order to conduct an additional due-diligence exercise to comfort HRIDC and AIIB that both the GC and the Contractor fulfil their contractual obligations without any undue favour to each other. The General Conditions of Contract for the Contractor are as per FIDIC Yellow Book, 2017 Edition for the Contractor. The Contract also contains Particular Conditions of Contract.

The Consultant will coordinate with HRIDC for achieving the deliverables covered in the scope of the consultancy for Contract Monitor for the C-4 package.

4. OBJECTIVES

The main objective of the assignment is to ensure that the GC and the Contractor fulfil their contractual obligations linked to the C4 package without any undue favour to each other.

5. SHORTLISTING CRITERIA

The Consultant shall be shortlisted on the basis of following criteria:

S. No.	Evaluation Criteria
Part A	
1.	Professional Qualification Bachelor’s Degree in Civil Engineering from a recognized institution.
2.	Total Professional Experience (Post essential professional qualification): Should have at least 15 years of experience of Contract Management in infrastructure Project of Doubling/New line of Railways / Gauge conversion /Metro Rail /Regional Railways/High Speed Railways/Highways/Expressways Project.
3.	Should have at least 05 years of experience in management/execution of Tunnel Contracts.

4.	<p>Retired Government Employees (Central/State/PSUs):</p> <p>(i) from Government Department should have retired from at least level 15 or Equivalent</p> <p>(ii) from Public Sector Undertaking should have retired from at least level E-9 in the rank of Executive Director or above.</p> <p>(iii) should not have any of the following :-</p> <ul style="list-style-type: none"> • involved in any current vigilance/CBI cases or against whom disciplinary or prosecution proceedings are in process. • against whom major penalty has been imposed during last 10 years of service as result of vigilance/CBI action. • against whom minor penalty has been imposed during last 05 years of service as result of vigilance/CBI action.
5.	Persons working in private sector should have worked as Project in charge for at least 15 years in infrastructure Project of Doubling/New line of Railways/ Gauge conversion/ Metro Rail /Regional Railways/High Speed Railways/Highways/Expressways Project. He should have at least 05 years of experience in management/execution of tunnel contracts.
6.	Preference will be given to those having experience of management of FIDIC Contracts/MDB funded projects through international funding.
PART B: Assessment of Consultant for the assignment	

The Consultant shall submit his detailed CV along with the Consultant Information and Declaration Form enclosed with this document. The Consultant should submit copies of relevant documents to substantiate their claim for meeting selection criteria given in the above Table.

The Consultant shall submit the above documents by email only at the address given below: gminfrahrdc@gmail.com

6. APPOINTMENT OF CONSULTANT

Interaction with the Consultant may be carried out by the Bank before issuance of the engagement letter.

7. SCOPE OF WORK

The scope of the work of the Consultant shall be, but not limited to, as follows:

- (i) Study the General Consultancy contract for the HORC Project awarded to RITES-SMEC consortium and the C-4 contract awarded to RVNL in order to understand their scopes and general requirements;
- (ii) Visiting construction site(s) on a quarterly basis and get himself apprised on the contractual progress.;
- (iii) On a quarterly basis the Contract Monitor, along with HRIDC, will discuss with the GC and the C-4 Contractor about their contractual obligations, especially any potential conflict of interest that might arise during the project implementation.
- (iv) Monitoring the Key activities undertaken by the GC and the Contractor linked to the implementation of the C4 Contract Package including, but not limited to,

the following:

- a. The role and duties of “the Engineer” as stipulated in the Contract;
- b. Quality Assurance mechanism, material testing and vetting of works quality undertaken by the contractor;
- c. Remedial works by the Contractor, as ordered/agreed by GC;
- d. Payments made to the Contractor (advance, interim and final) and retention money;
- e. Issuance of any contract variations;
- f. Price escalations related payments, extension of time and liquidated damages;
- g. Performance security and insurance;
- h. Deployment of Contractor’s Personnel as per the Contract;
- i. Employment of sub-contractors, if any, as per the Contract;
- j. Health and Safety, especially site safety procedures;
- k. Environmental protection measures;
- l. Gender-based violence and mitigation measures;
- m. As-built Documents;
- n. Labor employment and working conditions;
- o. Defects liability;
- p. Provisional sum and day works.
- q. Termination of Contract (if any) and payments after termination;
- r. Other roles and responsibilities of the Employer and the Contractor;
- s. Application of force majeure provisions (if applicable);
- t. Any other claims, disputes and arbitration as per Contract;

The Consultant is not expected to conduct physical testing/quality check of the works or check the design undertaken by the Contractor or its consultants or approved by the GC. He is also not required to witness any work done for its quality/ completeness etc.

The Consultant shall develop the methodology for monitoring the functioning of GC and the Contractor to ensure the objective of the present assignment of the Consultant. He shall develop the methodologies and include the same in the inception report. This shall include formats for reports and certificates to be submitted by the Contractor and the GC along with their submittals / approvals by then general consultant.

8. DELIVERABLES

The Consultant shall deliver as follows:

- i) Draft Inception report within 15 days of engagement of the Consultant.
- ii) Finalization of inception report after incorporating the comments of HRIDC and approval of HRIDC.
- iii) Bi-annual monitoring reports.
- iv) Final monitoring report

8.1 Draft Inception report

The Consultant shall identify the potential areas of conflict of interest in consultation with the Contractor, the GC and HRIDC. These shall include statutory provisions of company law which prohibits certain actions by the companies like

- acquiring shareholding,
- lending or transferring key management functionaries from one organization to other,
- acquiring assets of one company by the other
- compromising on quality or quantities of the work not as per the agreed standards and specifications as provided in the contract.
- passing on undue benefit in the form of payments more than actually due at any point of time of execution of the work.

The Consultant shall amplify the above items further and incorporate them in the inception report. The Consultant shall study the formats of reporting by the Contractor and the GC. He shall also identify the inadequacies (if any) and the frequency at which reports are to be submitted by the Contractor and the GC.

The Consultant shall also elaborate the methodology he shall adopt for fulfilling his obligation under the present assignment. The inception report shall be finalized after taking into consideration and incorporating the comments /suggestions of HRIDC.

8.2 Final Inception Report

The draft inception Report shall be submitted to HRIDC within 15 days of the award of the consultancy contract. HRIDC will offer their comment on the draft Inception Report within 10 days of submission of the draft Inception Report by the Contract Monitor.

The Inception report duly incorporating the HRIDC's observation shall be finalized and submitted in the next 5 days.

8.3 Monitoring reports

The Consultant shall submit a monitoring report in the English language to HRIDC bi-annually or as and when required by HRIDC. The exact contents and structure of these reports shall be agreed between the Consultant and HRIDC prior to submission of the first report. The reports shall present a comprehensive overview of the C-4 Contract in a concise and accurate manner, with the aim of highlighting problems and exceptions. Where possible the Consultant shall use formats which present the "overview at a glance", with the appropriate backup material following. As a minimum the Consultants progress report shall include:

- a) Executive summary;
- b) Issues regarding contract implementation and remedial measures, if any;
- c) Overall details of contract implementation findings and recommendations;
- d) Compliance to the issues brought out in previous report/reports;
- e) Conclusions.

8.4 Final Report

The Consultant shall prepare a Draft Final Report after completion of the Contract. After submission of the Draft Final Report, the Consultant shall be available to the Bank to discuss the findings and recommendations. Afterwards, the Consultant shall prepare and submit the Final Report within four months of completion of the contract.

9. IMPLEMENTATION ARRANGEMENTS

The Consultant will be responsible to HRIDC for all the deliverables.

10. PAYMENTS & REMUNERATION

10.1 The Consultant shall be paid remuneration for its services as given below:

S. No.	Items	Amount
1.	Consultancy fee	INR 1.25 lakh per month
2.	Inception Report	(i) Submission of Draft Inception Report: INR 2.00 lakh (ii) Submission of Final Inception Report: INR 1.00 lakh
3.	Biannual Reports covering the items covered in the Scope of the Consultancy with specific observations on issues of conflict of interest, remedial action(s) suggested & compliances by the GC & the Contractor.	INR 2.00 lakh (To be paid at an interval of Six month).
4.	Final Report with comprehensive coverage of all items covered in the scope of the consultancy.	INR 6.00 lakh

10.2 The above-mentioned remuneration shall be inclusive of all taxes and duties (excluding Goods and Services Taxes) to be paid by the Consultants as per statutory requirements. GST as applicable will be paid extra to the above-mentioned remuneration. GST levied on the invoices raised by the Consultants will be temporarily withheld at the time of making payment for the invoice. GST withheld will be released by HRIDC on submission of proof, i.e. copy of Form GSTR-1 (reflecting the particular invoice) after due verification from the GST portal by HRIDC.

10.3 The Consultant shall be provided with transportation arrangements for site visits and meetings for performing the services contemplated in this Contract. HRIDC shall also provide facilities for printing of reports/documents including consumables.

10.4 Engagement of Consultant is not regular employment with HRIDC but limited to the engagement for specific terms as stated in ToR.

11. CONFIDENTIALITY

The Consultant shall maintain the confidentiality of all the official information to which the Consultant has the access during the period of contractual engagement.

12. TERMINATION OF CONTRACT

Contractual engagement as a Consultant may be terminated by HRIDC without assigning any reason thereof by giving 30 days prior notice to the Consultant. Similarly, the Consultant can terminate the contract by giving 30 days prior notice to HRIDC.

13. CONTRACTUAL AGREEMENT

Selected Consultant has to sign a Contract Agreement with HRIDC before joining contractual duties which will include all applicable Contractual Terms and Conditions.

14. CONFLICT OF INTEREST

The Consultant shall not have Conflict of Interest. The Consultant shall be considered to be in conflict of interest if:

- (i) the Consultant has been associated with General Consultant, Construction Contractor and designer of Construction Contractor of C-4 Contract in any capacity in their present assignment.
- (ii) the Consultant combine itself or associate itself with General Consultant, Construction contractor and designer of construction Contractor of C-4 Contract in future.

The Consultant shall not engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to the Consultant under the Contract.

The Consultant shall provide an undertaking to this effect in the Consultant information and declaration Form.

15. PROHIBITED PRACTICES

The Consultant shall comply with the Bank's Policy on Prohibited Practices as set forth in **Attachment 1** of this document.

Attachment 1

Prohibited Practices

1. The Bank requires that the Recipient (and all other beneficiaries of the Bank financing), as well as tenderers, suppliers, contractors, concessionaires and consultants under Bank-financed contracts for the Project, observe the highest standard of transparency and integrity during the procurement, execution and implementation of such contracts.
2. **Definitions.** In pursuance of this policy, the Bank defines the terms set forth below as Prohibited Practices:
 - (a) **“Coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party.
 - (b) **“Collusive practice”** means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.
 - (c) **“Corrupt practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.
 - (d) **“Fraudulent practice”** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
 - (e) **“Misuse of resources”** means improper use of the Bank’s resources, carried out either intentionally or through reckless disregard.
 - (f) **“Obstructive practice”** means any of the following practices: (i) deliberately destroying, falsifying, altering or concealing of evidence material to a Bank investigation; (ii) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (iv) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (v) materially impeding the exercise of the Bank’s contractual rights of audit or inspection or access to information.
 - (g) **“Theft”** means the misappropriation of property belonging to another party.
3. Any occurrence, or suspected occurrence, of a Prohibited Practice in the procurement, award or implementation of a Bank-financed contract is dealt with in accordance with the provisions of the Bank’s Policy on Prohibited Practices. Suppliers, contractors, service providers and consultants selected pursuant to the provisions of Section II and concessionaires selected pursuant to paragraph 14.3 of the Bank’s Procurement Instructions for Recipients, as well as the Recipient, shall fully cooperate with the Bank (or a co-financier undertaking an investigation pursuant to paragraph 6.1 of the Bank’s Procurement Instructions for Recipients) in any investigation into an alleged Prohibited Practice to be carried out pursuant to the Policy on Prohibited Practices, and permit the Bank or its representative (including such co-financier) to inspect such of their accounts and records as may be relevant for such investigation and to have such records and accounts audited by the auditors appointed by the Bank.

4. Provisions to this effect are included in the Legal Agreements and the procurement contracts with such entities.
5. If the Project is financed by a sovereign-backed loan, the Bank (or, where relevant, a co-financier having undertaken an investigation pursuant to paragraph 6.1 of the Bank's Procurement Instructions for Recipients):
 - (a) may take any of the following additional actions in connection with a Prohibited Practice under the Project:
 - (i) reject a proposal for award if it determines that the tenderer recommended for award, or any of its personnel, or its agents, or its sub-consultants, subcontractors, service providers, suppliers or their employees, has, directly or indirectly, engaged in a prohibited practice in competing for the contract in question; and
 - (ii) cancel the undisbursed portion of the loan allocated to a contract (and require reimbursement of the disbursed portion of the loan allocated to the contract) if it determines at any time that representatives of the Recipient or of a recipient of any part of the proceeds of the loan engaged in a prohibited practice during the procurement, administration or implementation of the contract in question; and
 - (b) requires that a clause be included in tender documents and in contracts financed by the Bank loan, requiring tenderers, suppliers and contractors, and their subcontractors, agents, personnel, consultants, service providers or suppliers, to permit the Bank (and a co-financier undertaking an investigation pursuant to paragraph 6.1 of the Bank's Procurement Instructions for Recipients) to inspect all accounts, records, and other documents relating to the submission of tenders and contract performance, and to have them audited by auditors appointed by the Bank.

Consultant Information and Declaration Form

Name of Consultant

Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
Details		
	Telephone/Mobile:	
	Total Professional Experience in Contract Management in infrastructure Project of Doubling/New line of Railways / Gauge conversion/ Metro Rail /Regional Railways/High Speed Railways/Highways/Expressways Project:	
	Total experience in management/execution of Tunnel Contracts.	
	Experience in MDB Projects (Yes/No),	<i>[If Yes, insert No. of Years]</i>
	Experience in Management of FIDIC Contracts	<i>[If Yes, insert No. of Years]</i>
	Name and Address of Last Employer	
	Total No. of Years with the last Employer	
	Retired Govt. Employees,	
	Level at the time of retirement	
	Private Sector Employees	
	No. of years as Project in charge in infrastructure Project of Doubling/New line of Railways/ Gauge conversion/ Metro Rail /Regional Railways/High Speed Railways/Highways/Expressways Project.	

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the assignment under the Contract.

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

Declaration

1. I have no conflict of interest in accordance with Clause 15 of this document.
2. I confirm my understanding of our obligation to abide by the Bank's policy in regard to Prohibited Practices as given in Attachment 1.
3. It is confirmed that:
 - I am not involved in any current vigilance/CBI cases or any disciplinary or prosecution proceedings which are in process.
 - No major penalty has been imposed against me during last 10 years of service as result of vigilance/CBI action.
 - No minor penalty has been imposed against me during last 05 years of service as result of vigilance/CBI action.

Name of Consultant: *[insert name]*

Signature: _____

Date: (day month year): _____

Note:

1. *The Consultant should submit copies of relevant documents to substantiate their claim for meeting selection criteria given in the Table under Clause 5*