

**MINUTES OF THE 54th MEETING OF THE BOARD OF GOVERNORS
(THROUGH HYBRID MODE)
HELD ON 21st MARCH, 2024 AT NIT UTTARAKHAND**

The following members were present:

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| 1. Prof. Lalit Kumar Awasthi | - | I/c. Chairman & Director, NITUK |
| 2. Shri. Anil Kumar | - | Director, IFD, MoE |
| 3. Ms. Veena Dunga | - | Special Invitee |
| 4. Shri. N. S. Bisht | - | Deputy Secretary, MoE |
| 5. Prof. Kamal Kishore Pant | - | Director, IIT Roorkee |
| 6. Prof. V. K. Paul | - | Special Invitee |
| 7. Dr. Lalta Prasad, Asso. Professor, NITUK | - | Member |
| 8. Dr. A. K. Anupam, Asstt. Professor, NITUK | - | Member |
| 9. Shri. Hari Maul Azad, Registrar | - | Secretary |

Mr. Yogesh Sharma, Sr. Executive Director (Engg.) from NBCC (India) Ltd. represented the Project Management Consultant (PMC) in the meeting.

At the outset Secretary welcomed all the members, and requested I/c. Chairman, Board & Director, NITUK to preside over today's meeting of the Board of Governors.

After the permission of I/c. Chairman, Board deliberated the following agenda and resolved as under:

BoG 54.01: To review and give necessary directions on the resolution vide BoG 52.03 dated 28.02.2024 regarding "approval of the release of administrative approval and expenditure sanction alongwith disbursement of 10% initial deposit to NBCC towards the construction and development of Infrastructural facilities at NIT Uttarakhand- Sumari Campus."

The release of administrative approval and expenditure sanction alongwith disbursement of 10% initial deposit to NBCC towards the construction and development of Infrastructural facilities at NIT Uttarakhand- Sumari Campus was deliberated in the 52nd Board meeting held on 28.02.2024 vide agenda item BoG 52.03. Accordingly, the board resolved the following:

Resolve 52.03: "Approved the release of AA & ES in favour of the NBCC (India) Ltd. alongwith 10% initial deposit, i.e. Rs. 6500 lakhs (Rs. Six Thousand Five Hundred Lakhs only), through disbursement of HEFA loan on submission of Performance Guarantee".

Subsequently, AA & ES was awarded to NBCC vide letter no. NITUK/AD(P&D)/2024/3352 dated 11.03.2024. NBCC vide letter no. NBCC/RBG(UK/INFRA)/Sr.ED/UKD/2024/226 dated 12.03.2024 responded pointwise to the terms & conditions of AA & ES. NBCC disagreed / raised objections to term nos. 04, 08, 11, 13, 14, 22, 25, and 30 of the AA & ES. All objections / disagreements of NBCC to the AA & ES were deliberated in the 40th Meeting of Institute level Project monitoring Committee (ILPMC) dated 14.03.2024, and the



response of the Institute was communicated to the NBCC vide letter no. NITUK/AD(P&D)/2024/3431 dated 18.03.2024.

The major objections / disagreement of the NBCC are regarding the underlined statements in the terms 13, 14 and 25 of the AA & ES which are mentioned below:

Term 13: In accordance with the Clause H of the MOU dated 16.07.2021, NBCC (India) Ltd. shall submit a performance security equivalent to 10% of the contract value within 15 days from the award of Administrative Approval & Expenditure Sanction after which the amount as stipulated in the agreement shall be released. The Performance security shall remain valid for a period of sixty days beyond the date of completion of all contractual obligations and project defect liability period of 24 months as per clause G4 of the MoU. A dedicated team of NBCC shall be deputed in the Institute during Defect Liability Period (DLP) and the extended maintenance period of one year (clause G5) to resolve the defects. The Performance Security shall be liable to be forfeited by the Institute in case of any breach of any term and conditions of this contract by NBCC (India) Ltd.

Term 14: Against A/A & E/S, the Institute shall release the first Instalment of Rs. 6500 lakhs (Rs. Six Thousand Five Hundred Lakhs only) towards Initial deposit (i.e. 10% of the approved preliminary estimate) through HEFA within 15 days after receipt of performance security (i.e. performance guarantee) from NBCC or the date of issue of this AA & ES, whichever is later. Subsequent release of the funds shall be as per relevant clauses under section 'C' of the MoU and shall be made only after submission of Demand Note, Progress Report and in the form of recoupment of the expenditure made by NBCC (India) Ltd. on the work as per monthly expenditure statements which shall be submitted in Monthly Expenditure Statement (MES).

Term 25: NBCC shall endeavor to obtain all necessary approvals, in particular forest clearance / NGT, within two months of the date of this AA&ES. During this period, the PMC may award work to the contractor M/s. Sam (India) Builtwell Pvt Ltd. at its own risk and permit contractor for resource mobilization and pre-construction activities only. However, in case of any unforeseen delay and/or denial of approvals by any statutory body resulting in withholding of the project, any expenses incurred by the contractor / NBCC shall be forfeited by the Institute from its performance security. Under no circumstances, the contractor shall commence construction activity without all approvals in place.

It is brought to the notice of the Board that the terms and conditions of the MoU between NBCC and NIT Uttarakhand dated 16.07.2021 were deliberated pointwise and approved in the 14th Meeting of the Building and Works Committee (BWC) held on 14.06.2021. The action taken on the execution of MoU between NIT Uttarakhand and NBCC was noted in the 36th meeting of the board dated 09.09.2021. Also, the delegation of power to sign MoU was granted in 35th Board meeting dated 08.07.2021. Following important clauses of the duly approved MoU relevant to the objections / disagreements of the NBCC are reproduced below:

a. Clause C2:

““Procuring Entity” shall release Initial Deposit of 10% of the approved preliminary estimate (submitted by PMC) amount to “Project Management Consultant” within 2 (two) weeks of issuing A/A & E/S. This initial deposit shall be released after the

disbursement of the HEFA loan. This initial deposit would be retained for adjustment against the last portion of the expenditure.

"Procuring Entity" shall release additional deposit up to 10 (ten) % of approved estimate amount to "Project Management Consultant" within 2 (two) weeks of award of first major construction contract on the basis of specific request made by "Project Management Consultant" in this regard along with proper reasons and justifications acceptable to "Procuring Entity" for additional requirement of fund over and above already released initial deposit of 10 (ten) % of approved preliminary estimate amount."

b. Clause D2:

"Works shall not be awarded by PMC to contractors till all statutory approvals / certificates / permissions required for taking up the work, are in place."

c. Clause H:

"Project Management Consultant" shall arrange a performance security equivalent to 10% of the contract value within 15 days of date of starting of project. Performance security shall remain valid for a period of sixty days (60 Days) beyond the date of completion of all contractual obligations and project Defect Liability Period (DLP). The Performance security shall be liable to be forfeited by 'Procuring Entity' in case of any breach of any term and conditions of this contract by PMC.

The proposal to release administrative approval and expenditure sanction alongwith disbursement of 10% initial deposit to NBCC was deliberated in detail in the 39th meeting of the Institute level Project Monitoring Committee (ILPMC) meeting held on 10.02.2024 and the 22nd Building and works committee meeting held on 16.02.2024. The BWC vide agenda BWC 22.06 resolved that **the AA & ES may be duly approved by the Institute at its own level**. The minutes of 22nd BWC were noted vide resolve BoG 52.06 in the Board in its 52nd meeting dated 28.02.2024. Further, based on the recommendations of the Finance Committee in its 37th meeting dated 28.02.2024, the Board of Governors in its 52nd meeting dated 28.02.2024 vide resolve BoG 52.10 approved the release of AA & ES as mentioned earlier.

From the above it is evident that MoU dated 16.07.2021 is the only document that has the approval of the statutory bodies of the Institute. As resolved by the BWC in its 22nd meeting dated 16.02.2024, the AA & ES was prepared by the Institute to the best of its understanding through deliberations in the Institute Level Project Monitoring Committee and seeking external expert advice. The terms & conditions of the AA & ES were decided keeping best interest of the Institute.

From the above information, following can be summarized:

1. Terms 13 & 14 of the AA & ES are in contradiction to the Clauses C2 & H of the MoU dated 16.07.2021.
2. The term 25 of the MoU is in contradiction to Clause D2 of the MoU dated 16.07.2021.

It is worth noting that NBCC vide letter no. NBCC/ED (CPG)/2024/2714 dated 15.03.2024 informed the Institute about 'Letter of Award' to the contractor. However, **NBCC is yet to communicate to the Institute its formal acceptance to the AA & ES dated 11.03.2024.**

NBCC vide letter no. NBCC/RBG(UK/INFRA)/Sr.ED/UKD/2024/255 dated 18.03.2024 is also requesting of additional deposit of 10% as per clause C2 of the MOU date 16.07.2021. Thus, the total demand from NBCC is disbursement of HEFA loan of Rs. 13000 lakhs towards 10% initial deposit (Rs. 6500 lakhs) and 10% additional deposit (Rs. 6500 lakhs).

All relevant documents as mentioned are enclosed in **(Annexure BoG 54.01).**

In the light of the above facts and circumstances, the Board is requested to review its resolution BoG 52.03 dated 28.02.2024 and give necessary directions regarding objections / disagreement of NBCC to the certain clauses of AA & ES, alongwith disbursement of HEFA loan of Rs. 13000 lakhs towards 10% initial deposit (Rs. 6500 lakhs) and 10% additional deposit (Rs. 6500 lakhs) as requested by NBCC.

Resolution: The Board deliberated in detail on the AA & ES dated 11.03.2024 awarded by NIT Uttarakhand to NBCC (India) Ltd. for the Construction project at its Sumari campus. The objections of NBCC were also reviewed vis-à-vis the relevant MoU clauses. As recommended by the Finance Committee, the Board approved that the AA & ES awarded to NBCC dated 11.03.2024 be revised as per duly approved MOU dated 16.07.2021 alongwith following mutually agreed clauses by the NBCC during the meeting:

1. NBCC (India) Ltd. shall execute the project in letter and spirit of the mutually agreed Terms & Conditions as per the MoU signed on dated 16.07.2021.
2. Consequent to the revision of the tendered cost, Clause C1 of the MoU dated 16.07.2021 shall be read as: "Project Management Consultant" has agreed to charge 4.90% + GST as applicable for carrying out the assigned Deposit Work. The overall cap of payment from NIT, Uttarakhand for this project will be Rs 650.84 Cr. inclusive of the PMC charges of 4.90% and whatever taxes applicable."
3. NBCC will submit the performance security as per clause H of the MoU equivalent to 10% of the contract value and applicable GST with NBCC. Accordingly, the amount of performance security to be submitted by NBCC to the Institute shall be equal to Rs. 35, 574, 685.90/- .
4. NBCC clarified during the meeting that it will charge 5% of the performance security from the Contractor and remaining 5% will be deducted from running bills of the contractor. Thus, there is a provision of total 10% of the project cost that will be available as performance security from the contractor with NBCC for this project.
5. The Institute will appoint a third-party quality assurance agency to assess the actual progress of work, quality of construction, and any other related aspect. The cost for third-party quality assurance / audit @0.5% of actual tendered cost for third party quality assurance and PMC charges of (4.9% + GST) on the TPQA Charges is included in the overall project cost of Rs. 650.84 Crores.

Additionally, the Institute Level Project Monitoring Committee (ILPMC) of NIT Uttarakhand shall also be continuously monitoring the project.

6. The NBCC (India) Ltd. is fully aware to the developments related to the revision in the original 60 acres land. It has been confirmed by the NBCC to the Institute that the new land parcels in the revised 60 acres land are suitable and technically feasible for safe construction. Further, due to the revision in the land parcels there shall be no escalation in the overall project cost. As confirmed by the NBCC, any financial impact due to revision in land parcels shall be absorbed under 3% contingency head within the overall capping of project cost to Rs. 650.84 Crores.
7. The PMC shall submit detailed master plan alongwith lengths of roads, earth retaining structures, etc. within three months from the award of AA &ES.


BoG 54.02: Any other item with the permission of Chair.

Resolution: NIL.

The meeting ended with vote of thanks to the Chair.


(Hari Maul Azad)
Registrar & Secretary, BoG

✓Approved


(Prof. Lalit Kumar Awasthi)
I/c. Chairman, BoG & Director
22/03/24

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