**ITEM NO. 14 (A-43)**

**1. Name of the Subject / Project :-**

Construction of Foot Over Bridges, Subways and Underpasses in NDMC area.

**2. Name of the Department : -**

Civil Engineering Department, EE(RIP)

**3. Brief History of the Subject / Project :-**

The proposal for construction of foot over bridge / subway in NDMC area at following locations was approved by the council vide agenda item No. 03 (A-20) dated : 21.05.2008.

 **SUBWAY :**

* + 1. Shahjahan Road.
		2. Mandir Marg.
		3. BKS Marg near Hanuman Mandir (vehicular).

 **FOOT OVER BRIDGE**

1. Africa Avenue
2. Mother Teresa Crescent
3. Park Street

 **UNDERPASS**

1. Shanti Path

**STATUS**

1. M/s. DIMTS was engaged on turnkey agreement basis for design and construction of above listed foot over bridges, subway and underpass in NDMC area vide council agenda item No. 03(A-40) dated : 20.08.08. Out of above foot over bridges at all the three location and underpass at Shanti Path had been completed by M/s. DIMTS and are in operation since 25.09.2010 and 14.01.2011 respectively.
2. **Vehicular Subway at BKS Marg** : The proposal for subway at BKS Marg was kept in abeyance as other works were going on BKS Marg namely Airport Link Metro, Multi level parking etc. Afterwards, the vehicular subway was not found feasible being space constraints and existence of subway at Hanuman Mandir.
3. **Pedestrian subway at Shahjahan Road**

The proposal for Shahjahan road as prepared by M/s DIMTS was submitted to UTTIPEC, “The governing body for construction of foot over bridge in Delhi”, and subsequently the proposal submitted to committee under the chairmanship of ‘Principal Secretary, PWD’ for consideration and approval. The proposal submitted was not approved by Principal Secretary PWD since after the site observation, it was decided that the pedestrian subway at Shahjahan Road is not required, keeping in view the traffic intensity and volume of pedestrian crossing the road.

1. **Pedestrian Subway at Mandir Marg.**

The concept plans of pedestrian subway at Mandir Marg was approved by empowered committee on 17.04.09. On approval of the concept plan by NDMC, M/s. DIMTS invited the bids for the pedestrian subway Mandir Marg and awarded the contract on 01.10.2009 to M/s. R S Sharma Construction Co. The project report of the subject work submitted by M/s DIMTS was approved by the council vide agenda item No. (A-139) dated : 15.01.2010.

Contractor had mobilized the work by erecting the barricading and deploying the resources after award of work in 2009 and approval of project report.

The work was demobilized on 16.03.2010 as the permission for traffic diversion plan was not granted by Delhi Traffic Police due to CWG-2010 as well as closure of Panchkuian road due to DMRC work in progress.

Delhi Traffic Police has given permission in May, 2012 for the traffic diversion plan and closure of one side of Mandir Marg for construction of pedestrian subway at Mandir Marg and M/s. DIMTS was accordingly informed.

The contractor mobilized the work and erected the barricading in construction zone and made arrangement as per traffic diversion plan by deploying traffic Marshall and signage’s to manage the traffic diversion. The contractor carried out the survey of services by making trial pits etc.

RWA’s had strongly opposed for the construction of subway and further citing the UTTIPEC Guidelines duly approved by the Hon’ble L.G. in regards the subway (Underpass) for pedestrian crossing. UTTIPEC (Unified Traffic & Transportation Infrastructure Planning & Engineering Centre) and it has been intimated that in 31st UTTIPEC Governing Body Meeting held on 10.06.11 under the chairmanship of Hon’ble Lt. Governor of Delhi, the guidelines/checklist in regards the pedestrian crossing was approved in the subject title **“FOB need criteria and design guidelines”** F.2(02)2010/UTTIPEC. The aforesaid minutes of meeting of UTTIPEC of Governing Body was issued vide No.F.1(2)2011/UTTIPEC/31st/D-189 dated 6.7.11 and copy is annexed at **Annexure ‘A’ (See pages 202 - 221).**

In regards the pedestrian crossing, the three options such as FOB, Underpass (Subway) and at grade crossing were discussed and the following guidelines was approved after the detailed discussion in various working groups of UTTIPEC under the Jt. Commissioner of Police (Traffic), PWD, DIMTS etc.

The FOB needs criteria and design guidelines along with mentioned directions.

1. FOBs are to be the exception, not the rule. They are to be provided only under circumstances where no at-grade crossings are feasible.
2. Underpass not to be provided at all, unless under extreme circumstance where no other solution (including FOBs) are feasible.
3. At-grade crossings (raised table-tops or zebra crossings) with pedestrian/pelican signals and adequate signage and traffic calming measures are to be used on all Urban Roads within city limits. Pedestrian Signals (approx.20 Sec.) should be synchronized along with the nearest full-traffic signals along all roads including arterials and sub arterials, for smooth movement of traffic along with safe pedestrian/NMV crossing.

The construction of pedestrian subway not to be taken up as it is being felt that subways are not being used by the public at large due to safety reasons as these become the den of anti social elements and the scheme may be closed.

M/s. DIMTS has been informed vide letter No. D-310/CE(C-I) dated : 07.09.2012 for closing the agreement of construction of subway and exploring the possibility of construction of foot over bridge at Mandir Marg.

As per decision taken in review meeting, M/s. DIMTS informed the contractor to demobilize the work and contractor removed all the barricades, site offices etc. and restore the road for vehicular movements.

M/s. DIMTS informed that the contractor was engaged for the work on 01.10.2009, and had mobilized and demobilized the work twice, the financial implication on this account has to be debited to the NDMC account. M/s. DIMTS were persuaded for early finalization of the financial implication with the contractor on closure of the project vide letter no. D/306/CE(C-I) dt. 10.09.2012 and again vide D.O. no. 1369/CE-R/PS/CP/12 dt. 29.11.2012. In response to referred D.O. letter dt. 29.11.2012, M/s. DIMTS has submitted the net financial implications settled with the contractor on closure of the work of subway at Mandir Marg vide letter no. DIMTS/VPE/NMDC—FOBS/13/2012/218 dt. 17.01.2013 amount to ` 8341118/-.

**4. Detailed proposal on the subject / project.**

NIL

**5. Financial implications of the proposed subject / project.**

The expenditure for the work mobilized and demobilized two times by the contractor engaged on 01.10.2009 has been submitted by M/s. DIMTS after settlement with the contractor. M/s. DIMTS consultant was engaged for the work on turnkey basis. The details of the expenditure provided by M/s. DIMTS are as below:

**A. Payment already made**

1. Payment already made against work done (1st RA Bill) : ` 22,04,700/-
2. Mobilization advance : ` 60,00,000/-

**A.1**. Payment against work done since previous bill : (+) ` 12, 66,897/-

**A.2.** Payment against accepted claims

(a) Payment against Cost Escalation for work : (+) ` 5, 55,999/-

 done during year 2012.

(b) Payment against claim for Cost of Idle : (+) ` 49, 81,929/-

 Manpower/Equipment.

(c) Payment against claim for reimbursement of : (+) ` 11,00,360/-

 Expenditure incurred for Issuance/Maintenance of

 Bank Guarantees.

**A.3.** Recoveries from the contractor

(a) Recovery of mobilization Advance : (-) ` 60, 00,000/-

(b) Recovery of Interest on Mobilization Advance : (-) ` 17, 68,767/-

**B.** The net financial implication is summarized as under:-

(a) Payment against work done (A.a+A.1) : ` 34, 71,597/-

(b) Other claims / recoveries : ` 48, 69,521/-

 (A.b+A2.a+A2.b+A2.c-A3.a-A3.b).

 Total (a+b) : ` 83, 41,118/-

(c) Gross Financial implication as under : ` 1, 01, 09,855/-

 (A.o+A1+A2(a)+A2(b)+A2(c))

The total amount of `1,01,09,855/- worked out by M/s DIMTS had been accepted by the contractor as final settlement against work agreement with net amount of ` 83, 41,118/- after recovery of interest ` 17, 68,767/- only on mobilization advance of ` 60 Lacs given to the agency as per the terms of the contract. In this regard, it is to submit that as per the turnkey agreement clause no. 7.1.1(terms of payment), clause no.15.4 and clause no. 23.0(a) with M/s DIMTS which reads as under:-

 “In event of non- execution/ deferment/ modification of scheme in full or part of the works planned/ in different stages of planning, the fee as per mutual discussions shall be made to DIMTS. This fee shall be in addition to the prescribed fee for the executed works making part of ‘Cost of Project’. In this case, any claim arising out of foreclosing of the activity by the agency (s) shall also be borne by the NDMC in proportion to the work executed or service rendered. DIMTS shall be fully authorized to amicably settle all these claims, the fee for consultants and the specialist and make payment and draw its own fee out of the amount advanced for the Project Expenditure.”

 In view of above explained facts, since M/s DIMTS is fully authorized to settle all the claims. The claims of the agency finalized by M/s DIMTS for fore closure of work of Mandir Marg subway be accepted.

 Further, it is to put on records that the total expenditure estimated amounting to ` 6.04 Crores approx. + escalation of `2.54 = `8.58 Crores as applicable would have incurred if had construction of subway at Mandir Marg under taken and completed apart from the recurring expenditure on maintenance of the subway. It has also been informed by M/s DIMTS that the FOB is not considered as a feasible alternative at this location.

**6. Implementation schedule with timelines for each stage including internal processing.**

NIL

**7. Comments of finance department on the subject.**

 The copy of the agreement executed between M/s. DIMTS and the contractor of this work is not made available with the record. However, Clause 13 of the GCC of CPWD provides foreclosure of contract with payments and compensation to contractors on account of Preliminary site work, T&P, repatriation of contractor’s site staff and imported labour to the extent necessary etc. This clause inter-alia also stipulates that “the contractor shall, if required by Engineer in charge, furnish to him, books of account wages books, sheet and other relevant documents and evidence as may be necessary to enable him to certify the reasonable amount payable under this condition.” The DIMTS while accepting these claims as per letter dated : 17.01.2013 placed at Page 65/C onwards has also submitted the reasons and detailed analysis of the claims accepted by them. The abstract position of financial implication is as under :-

Work Done (1st & 2nd R/A Bill) : `.34,71,597/-

 Claim Accepted : `.66,38,288/-

 Total Financial Implication : `.1,01,09,855/-

 Less interest on Mobilization Advance : `.17,68,767/-

 Net amount released / to be released : `.83,41,118/-

The department at para 5 of draft agendum has mentioned turnkey agreement clause No.7.1.1 (terms of payment), clause 15.4 and clause No. 23.0(a). The department has also mentioned the provision of 23.0(a) there under which inter-alia also provide that “**DIMTS shall be fully authorized to amicably settle all the claims, the fee for consultant and the specialist and make payment and draw its own fee out of the amount advanced for the Project Expenditure”**

 As per the agreement between NDMC and M/s. DIMTS placed on record, it appears that provision of clause 15.4 which deals with “Termination of agreement” has also implication in this case. This clause provides as under :-

 15.4 the termination of this contract shall not relieve either party of their obligation imposed by this contract with respect to services performed by either party prior to such termination and NDMC shall pay to DIMTS for all the scope of services performed by DIMTS under this agreement upto the date of termination such compensation as may be mutually agreed upon and proportionate to the percentage progress of SERVICES as indicated in latest progress report submitted. Further, NDMC shall reimburse DIMTS for such additional expenses which DIMTS may incur for orderly winding up of services.

 As the “other claims” of contractor accepted by M/s. DIMTS are based on the site condition and technical issues, the department after considering them in light of above stated position, may placed the case before council while bringing on record (i) the relevant contents of letter dated : 24.01.2013 of M/s. DIMTS placed at page 64/c which informs about cost of development of infrastructure in case it is continued and the findings that FOB is not feasible as an alternate, (ii) the further utilization / fate of physical work done, if any, and (iii) as the proposal on page 20/N also contains closure of turnkey agreement with M/s. DIMTS, financial implications under relevant clauses(s) of agreement with them.

**8. Comments of the department on comments of finance department.**

 In regard to the “other claims” of the contractor accepted by the M/s. DIMTS based on the provisions of contract with the contractor and M/s. DIMTS had given the elaborated reasons and analysis in support of the claims acceptance. Hence, it is to submit that the claims settled by M/s. DIMTS may be accepted since the claims made against the cost escalation of the work done during May to September 2012 as the work was awarded to the contractor in 2009 and for the Idle manpower and equipment deployed by the agency at site of work twice on mobilization of the works i.e. firstly in 2009-10 and again during May.’12 to Sep.’12.

 The parawise replies to the points of finance deptt are as under:-

(i) M/s. DIMTS vide their letter dated : 24.01.2013 had informed that the total financial implication (appx.) in case the work of Mandir marg subway is undertaken and completed now that would be as under :-

(a) Awarded cost of the work : `. 604 Lacs

 (Awarded in Oct.’09)

(b) Cost escalation as on date : `. 254 Lacs

 (Approx 42% on the basis of price indices)

 Likely construction cost as on date : `. 858 Lacs

Moreover, the M/s. DIMTS has informed that the FOB has not been considered as a feasible alternative at this location.

(ii) In regard to the further utilization of physical work done, it is to submit that the Physical work carried out at site by contractor were for erecting barricading, on site marking of layout of subway, making of slip carriage way by dismantling central verge etc. & laying of RMC, making trial pits for service demarcation, installing signages of traffic diversion, deployment of marshals to guide the traffic vehicular movement which were removed and all other dismantled areas were restored in original position on closure of the work and cannot be anymore utilized.

(iii) In regard to the termination of agreement under provision of claim 15.4, it is submitted that the after approval of the closure of the turnkey agreement with the M/s. DIMTS, obligation with respect to the services performed by the M/s. DIMTS will be settled mutually proportionate to the percentage of the services rendered by the M/s. DIMTS within the scope & provisions of the turnkey agreement with the agency.

**9. Final view of the Finance Department**

The finance has concurred in the proposal to place the case before the council while bringing on record vide Dy. No. 135/Finance/R Civil/dt.11.02.13.

**10. Legal implications of the subject / project**

No legal issues are involved in this project.

**11. Details of previous council resolution / existing law of parliament and assembly on the subject.**

(a) 11(A-13) dated: 26.08.05.

(b) 17(A-58) dated : 19.12.07.

(c) 3(A-20) dated : 21.05.08.

(d) 03(A-10) dated : 20.08.08.

(e) 06(A-139) dated : 15.01.10

**12. Comments of Law Department on the subject.**

No comments

**13. Comments of the department on comments of Law Department.**

No comments

**14. Certification by the department that all central vigilance commission (CVC) guidelines have been followed while processing the case.**

Certified that all relevant CVC guidelines would be followed.

**15. Recommendations.**

The case is placed before the council for information of the gross financial implication of `.1,01,09,855/- with net financial implication of ` 83, 41,118/- only after adjustment of `.17,68,767/- on account of interest on mobilization advance given to the contractor to be borne by NDMC on closure of the proposal to construct the pedestrian subway at Mandir Marg against the turnkey agreement of M/s. DIMTS for the work “Construction of Foot Over Bridges, Subways and Underpasses in NDMC area” as well as accord permission to close the turnkey agreement with M/s DIMTS for the subject work.

**COUNCIL’S DECISION**

Information noted by the Council. Further, the Council accorded permission to close the turnkey agreement with M/s DIMTS for the project in question, with net financial implication of `83,41,118/- and resultantly release the aforesaid amount to M/s DIMTS.