

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI.

COUNCIL'S MEETING NO. 02/2014-15 DATED 27.05.2014 AT 3-30 P.M.

Arrangement of business

ITEM NO.	SUBJECT	PAGE	ANNEXURE
01 (C-)	Confirmation and signing of the minutes of the Council's Meeting No. 01/2014-15 held on 30.04.2014.		
	PPP Project for Repair/Renovation, Operation and Maintenance of 94 PTUs in NDMC area (South of Rajpath).		
	Contracts/Schemes involving an expenditure of Rs.1 Lac but not exceeding Rs.200 lacs.		
	Action Taken Report on the status of ongoing schemes/works approved by the Council.		

ITEM NO. 01 (C –)

Confirmation and signing of the minutes of the Council's Meeting No. 01/2014-15 held on 30.04.2014. (See pages)

COUNCIL'S DECISION

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

MINUTES OF THE COUNCIL'S MEETING NO. 01/2014-15 HELD ON 30.04.2014,
AT 11-00 A.M. IN THE COUNCIL ROOM, PALIKA KENDRA, NEW DELHI.

MEETING NO.	:	01/2014-15
DATE	:	30.04.2014
TIME	:	11-00 A.M.
PLACE	:	PALIKA KENDRA, NEW DELHI.

PRESENT :

- 1. Jalaj Shrivastava - Presiding Officer / Chairperson**
- 2. Sh. Ashok Ahuja - Member**
- 3. Sh. I.A. Siddiqui - Member**
- 4. Sh. Suka Ram - Member**
- 5. Sh. Vikas Anand - Secretary**

This meeting was adjourned due to want of quorum.

(KUMAR HRISHIKESH)
F.A. / SECRETARY

(JALAJ SHRIVASTAVA)
PRESIDING OFFICER

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

MINUTES OF THE COUNCIL'S ADJOURNED MEETING NO. 01/2014-15 HELD ON 30.04.2014,
AT 11-15 A.M. IN THE COUNCIL ROOM, PALIKA KENDRA, NEW DELHI.

MEETING NO.	:	01/2014-15
DATE	:	30.04.2014
TIME	:	11-15 A.M.
PLACE	:	PALIKA KENDRA, NEW DELHI.

PRESENT :

- | | | |
|-----------------------------|---|--|
| 1. Jalaj Shrivastava | - | Presiding Officer / Chairperson |
| 2. Sh. Ashok Ahuja | - | Member |
| 3. Sh. I.A. Siddiqui | - | Member |
| 4. Sh. Suka Ram | - | Member |
| 5. Sh. Vikas Anand | - | Secretary |

ITEM NO.	SUBJECT	DECISION
01 (C-01)	Confirmation and signing of the minutes of the Council's Meeting No. 16/2013-14 held on 21.03.2014.	Minutes confirmed.
02 (A-01)	Survey Report.SH: Demolition of creche and store at the road connecting Amrita Shergill Marg to Humayun Road.	Resolved by the Council that the survey report for demolition of the creche & store at the road connecting Amrita Shergill Marg to Humayun Road of Book value amounting to `3,11,584.00 be written off from the book and reserved price of `20,000.00 is approved. It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.
03 (A-02)	S/R of roads in NDMC area.	The Council noted the information for resurfacing the

	Resurfacing of Tilak Lane and Pandara Park under the jurisdiction of R-I Division.	streets and lane as per CRR I recommendation for the work "S/R of Roads in NDMC Area. SH.:- Resurfacing of Tilak Lane and Pandara Park under the jurisdiction of R-I Division".
04 (B-01)	Estimate for replacement of HT panels in Maintenance North area.	Resolved by the Council to accord administrative approval and expenditure sanction to the Preliminary Estimate amounting to `16,57,60,573/-(G) ; `16,02,73,251/-(N) for replacement of HT Panels in Maintenance North. It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.
05 (B-02)	Replacement of 33KV, SF6, Panel Board with 33KV GIS, DBB Panel Board at 33KV ESS, School Lane. Tender I.D. No.2013_NDMC_34240_2 (Award of Work: `11,32,20,016/-)	Resolved by the Council to accord approval to award the work of "Replacement of 33KV SF6 Panel Board with 33KV GIS DBB Panel Board at 33KV ESS School Lane" to L-I firm, M/s. Schneider Electric Infrastructure Ltd. at a total cost of `11,32,20,016/- (Rupees Eleven Crore Thirty Two Lacs Twenty Thousand Sixteen only) on the terms & conditions of NIT, and subject to the approval of the IEM. Further resolved by the Council to accord revised administrative approval and expenditure sanction of `11,32,20,016/- (Rupees Eleven Crore Thirty Two Lacs Twenty Thousand sixteen only) on the aforesaid terms and conditions. It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.
06 (U-01)	Security and Traffic Services / Arrangements at NDMC Premises under Group Contract 'E'.	Resolved by the Council that to approve the Group Contract 'E' for Security and Traffic Services/Arrangements at NDMC Premises and the work be awarded to M/s Good Year Security Service (Regd.) at their quoted amount of `2,27,62,368.36 (Rupees Two crore twenty seven lakh sixty two thousand three hundred sixty eight and paise thirty six only) per annum for a period of two years which comes to a total of

		<p>₹4,55,24,736.72 (Rupees Four crore fifty five lakh twenty four thousand seven hundred thirty six and paisa seventy two only) as per terms & conditions of NIT and subject to approval of the IEM.</p> <p>It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.</p>
07 (U-02)	Security and Traffic Services / Arrangements at NDMC Premises under Group Contract 'F'.	<p>Resolved by the Council to approve the Group Contract 'F' for Security and Traffic Services/Arrangements at NDMC Premises and the work be awarded to M/s Jatayu Enterprises Services at their quoted amount of ₹ 2,08,25,295.60 (Rupees Two crore eight lakh twenty five thousand two hundred ninety five and paisa sixty only) per annum for a period of two years which comes to a total of ₹ 4,16,50,591.20 (Rupees Four crore sixteen lakh fifty thousand five hundred ninety one and paisa twenty only) as per terms & conditions of NIT and subject to approval of the IEM.</p> <p>It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.</p>
08 (U-03)	Security and Traffic Services / Arrangements at NDMC Electric Sub-Stations under Group Contract 'G'.	<p>Resolved by the Council to approve the Group Contract 'G' for Security and Traffic Services/Arrangements at NDMC Electric Sub-Stations and the work be awarded to M/s Bimla Enterprises at their quoted amount of ₹ 1,87,32,479.88 (Rupees One crore eighty seven lakh thirty two thousand four hundred seventy nine and paisa eighty eight only) per annum for a period of two years which comes to a total of ₹ 3,74,64,959.76 (Rupees Three crore seventy four lakh sixty four thousand nine hundred fifty nine and paisa seventy six only) as per terms & conditions of NIT and subject to approval of the IEM.</p> <p>It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.</p>

09 (E-01)	Administrative Approval and Expenditure Sanction of ₹ 500 Lacs for procurement of Allopathic Medicines for the year 2014-15.	<p>Resolved by the Council to accord administrative approval and expenditure sanction to the preliminary estimate amounting to ₹ 500 Lacs (Rupees Five Hundred Lacs only) for purchase of Allopathic Medicines during the financial year 2014-15.</p> <p>The Council directed that separate proposal should be initiated for inviting tender and enter into rate contract w.e.f. 07.10.2014 for a period of one year.</p> <p>Further resolved by the Council to accord approval to place supply orders every quarter based on requirement during the preceding three months with a provision to place a supplementary order in between if required, to the firms under the approved rate contract.</p>
10 (M-01)	Revision of user charges of renovated/upgraded Shivaji Stadium, New Delhi.	<p>Resolved by the Council to accord approval to the proposal of the department as detailed in para 4 of the preamble along with the modified terms and conditions.</p> <p>The Council also authorised the Chairperson to reduce the user charges of the Stadium on case to case basis, and also for the events organized by the NDMC.</p>
11 (M-02)	Corrigendum for Agenda Item No. 02 (K-02) in respect of Refund of user charges in case of Cancellation/postponement of booking of Talkatora Indoor Stadium, New Delhi.	Resolved by the Council to approve the proposal of the department as detailed in para 4 of the preamble, subject to condition that the word 'Kavi Samelan & Mushayra' may be included in para 4 serial No. 'B' instead of para 4 serial No. 'C'.
12 (C-02)	Contracts/Schemes involving an expenditure of Rs.1 Lac but not exceeding Rs.200 lacs.	Information noted.
13 (C-03)	Action Taken Report on the status of ongoing schemes/works approved by the Council.	Information noted.
	SUPPLEMENTARY ITEM	
14 (B-03)	Providing Mechanized Facility Management Services at NDCC Phase-II Block-C.	Resolved by the Council to accord approval to award the work of Providing Mechanized Facility Management Services at NDCC Phase-II Block-C to M/s. BVG India Ltd.

		<p>at their quoted rate of `3,14,38,107.00 (Three crore fourteen lacs thirty eight thousand one hundred seven only).</p> <p>It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.</p>
	TABLE ITEMS	
15 (W-01)	Seeking in-principle approval of the Council for continued retention of Consultant Architect for two markets i.e. Khan Market and Gole Market.	Resolved by the Council to approve the proposal of the department for continued retention of Consultant Architect of two markets, i.e. Khan Market and Gole Market.
16 (L-01)	Provisional adoption of Land Rate, review of Policy/guidelines for Freehold Conversion and for change in use from Residential to Commercial in respect of Markets transferred from L&DO.	Information noted.

(KUMAR HRISHIKESH)
F.A. / SECRETARY

(JALAJ SHRIVASTAVA)
PRESIDING OFFICER

ITEM NO.**1. Name of the Subject /Project :-**

Sub: - PPP Project for Repair/Renovation, Operation and Maintenance of 94 PTUs in NDMC area (South of Rajpath).

2. Name of the Department :-

Civil Engineering Department, EE(RIP)

3. Brief History of the Subject / Project :-

During year 2005-2006, RFP invited for the subject work. All these toilets under the subject work to be renovated and run free of charge for the user's. The work was awarded to M/s. Hythro Power Corporation Limited (now M/s Supreme Advertising Pvt. Ltd.) on 13.03.2006 by Dir. (Proj.) on approval of council for concession period of Seven years from date of commencement of work on minimum concession fee of `98,823/- per month and increased annually by 5% on the previous year concession fees or 9.71% of receipts from advertisements whichever is more. As per agreement clause, the renovation of toilets to be completed within Six month and period to be termed as implementation period. During progress of work, the some location were shifted due to intervention of the residents, RWA etc., Date of commencement and commercial operation date (COD) were determined as 22.05.2006 & 31.03.2009 respectively. According to date of commencement, the completion date of project concession ends on 21.05.2013. Both the dates so fixed were communicated to concessionaire by MOH vide letter no. D/520/CMO/Proj./2013, dated: 18.02.2013. The additional 15 PTU's sites were handed over during January 2010 to September 2010, under the agreement and no additional concession period was stated to the concessionaire. The extension of concession period by Five years is permissible under the provision of agreement. The extension was granted upto 31.03.2014 in first instance by the competent authority and communicated by MOH vide letter no. D/645/CMO(Proj.)/2013 dated: 28.05.2013 to the concessionaire and an undertaking in regard to double the concession fees during the extended term was sought from the concessionaire. Concessionaire submitted, the required undertaking to pay the double the concession fees during extended period and also raised some objection regarding extension period upto 31.03.2014. The concessionaire represented to the NDMC regarding concession period and extension of concession period under Clause 2.3 of agreement as well as Clause 2.9 (b) as under:-

3.1. The physical possession of sites was not given on time and the renovation work was delayed. So, the concession period shall be reckoned from the six months

prior to COD finalized (as 31.03.2009) by the NDMC i.e. from 30.09.2008 and concession period of Seven years shall expire on 29.09.2015.

- 3.2. During operations, some sites were demolished or blocked due to DMRC work & encroached by illegal vendors etc. for which the concession period be extended appropriately to compensate the revenue loss suffered as per Clause 2.9 (b) of agreement.
- 3.3. The extension of Five years be granted as per provisions of Clause 2.3 of agreement thereafter.

The matter was discussed in the meeting of officers in the chamber of Chairman NDMC and it was decided to add the PTU's (108 Nos.) in new RFP already invited by Dir.(Proj.). Against the inclusion of the PTU's in new RFP of Project Deptt., M/s Supreme Advertising Pvt. Ltd. (the concessionaire) filed an appeal in the Hon'ble High Court of Delhi which was listed on 29.01.2014.

The Hon'ble High Court ordered as under:-

IA No. 1848/2014 (Exemption)

"Exemption allowed, subject to all just exceptions. The application stands disposed of."

O.M.P.120/2014

After some arguments, learned senior counsel for the petitioner, on instruction, submits that the only aspect being pressed by the petitioner in this petition is with regard to the tenure of the extension of five years. The petitioner does not press the submission that the commencement date should be reckoned from 30.09.2008, or any other date, other than 18.05.2006.

He submits that under Article 2.3 of the contract, the concession is "extendable by five years on mutually agreed terms and conditions". He, therefore, submits that the tenure of extension could not have been unilaterally reduced upto 31.03.2014 "in first instance".

Limited to the aforesaid aspect, issue notice. Learned counsel for the respondent accepts notice. Reply, if any, be filed within four weeks. Rejoinder before the next date. List on 20.03.2014.

In the meantime, no Award letter shall be issued, or concession agreement entered into by the respondent with any third party, in respect of the sites in question.

A sub committee was constituted by competent authority to finalize the terms & conditions for extended period.

The matter was again heard in the Hon'ble High Court of Delhi on 27.03.2014 and an Arbitrator Mr. Justice M. A. Khan (Retd.) has been appointed by the Hon'ble Court to decide the issue mentioned in the para 14 & para 16 of the judgment as below:

Para 14:- *" The parties have agreed that since the only issue to be considered by the arbitral tribunal is the interpretation of the Concession Agreement and in particular Article 2.3 thereof, they shall only file their pleading and documents and there would be no requirement of leading an evidence in the matter."*

Para 16:- *"Accordingly, I appoint Mr. Justice M. A. Khan, Retd. Judge, Delhi High Court as the sole arbitrator to adjudicate the aforesaid dispute between the parties. The learned arbitrator shall be paid a fee of ` 4 Lacs apart from all other out of pocket expenses to be shared equally by the parties in the first instance. The parties shall appear before the learned arbitrator on 04.04.2014 at 4:30 p.m. It is hoped that the learned arbitrator shall render his award at the earliest, and preferably with the next four months."*

The recommendation of sub committee was submitted to the competent authority with remarked that *"on the limited issue of extension of concession period we may take the opinion of the NDMC Senior Counsel before going for the arbitration. If the NDMC Counsel is of the view that five years extension is to be granted to the concessionaire, unnecessary arbitration can be avoided and Council can be informed accordingly"*.

Competent authority had designated Sh. Sandeep Aggarwal, Sr. Counsel for the advise in the case. The opinion of Sh. Sandeep Aggarwal, Sr. Counsel dated: 21.04.2014 is as *" thus, keeping in mind the facts of the case, it is advisable that the queriest reach an amicable settlement and get the issue resolved and save the cost of arbitration and the expense of another tender"* The comments of Law Department on the opinion of Sr. Council was taken as, the matter may be placed before the authorities for further decision.

4. Detailed proposal on the subject / project.

To grant extension of Five years to concessionaire for the work "PPP Project for Repair/Renovation, Operation and Maintenance of 94 PTUs in NDMC area (South of Rajpath)" under Clause 2.3 of agreement dated: 18.04.2006 with concessionaire from 22.05.2013 to 21.05.2018. The concession period of Seven years was expired on 21.05.2013 and the extension upto 31.03.2014 in first instance was already granted on double the concession fees of the already paying fees as on 21.05.2013. Sub Committee also recommended at Page 327/N, that the concession fee for extended period of Five years shall be as minimum concession fees `2,74,316/- per month and increased annually by 10% on the previous year concession fee or 19.42% of revenue earned on advertisement whichever is more with approved terms and conditions.

5. Financial implications of the proposed subject / project.

The project is revenue earning project on PPP basis.

Minimum concession fees received @ `2,74,316/- P.M. or 19.42% of advertisement revenue earned whichever is more. The minimum concession fees will be increased by 10% annually on the previous year concession fees.

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

Date of Start of extended concession period	:	22.05.2013
Date of Completion of extended concession period	:	21.05.2018

7. Comments of Finance Department on the subject.

Comments of Finance Department vide Dy. no. 520/Finance/R-MOH dated 08.04.2013 are as under :-

The Department has proposed on page 264/N for extension of contract/concession period for 5 years from 21.5.2013 on mutually agreed terms and conditions in terms of Clause 2.3 of the existing contract. Considering the fact that the process for fresh concession contract has not been started by the Department even though the existing contract is going to expire in about a month (on 21.05.2013), any extension of contract in terms of existing contract clause should be based on following points:-

(a) *Whether the Department is in a position to run/maintain the toilet blocks departmentally, in case the extension is not allowed after the expiry of existing contract on 21.5.2013 and till the time new tender/RFP process is completed.*

(b) *Whether the concessionaire is willing to accept the terms and conditions for the extended period of contract of 5 years beyond 21.5.2013, including the revenue clause.*

As the toilet blocks are meant for public convenience and their non-maintenance/ill maintenance cannot be afforded, Finance Department has no objection if a decision is taken keeping in view these two points.

(F.A. has observed.)

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

(a) That Public toilets cannot be maintained departmentally.

(b) The concession fees was doubled for extended period and undertaking was received from the concessionaire in acceptance to the enhanced concession fees.

9. Final view of the Finance Department.

--NA—

10. Legal implications of the subject / project

The matter regarding extension of concession period by Five years under Clause 2.3 of agreement is referred to Arbitrator tribunal under Mr. Justice M A Khan (Retd.) by the Hon'ble High Court vide order dated 27.03.2014 on the petition of concessionaire, on fees of `4 Lacs apart from all other out of pocket expenses to be equally shared by both the parties in the first instant.

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

--NA--

12. Comments of Law Department on the subject.

The case file has been also seen in the law department On the opinion of the special counsel and law officer in his note vide diary No. FR-185/LD/14 dt. 30.04.2014 on P-334/N reproduced as under:-

1. *In this case, on the recommendations of the Secretary, the contract was extended by the Chairperson up to 31st March, 2014. The Chief Engineer (C-I) in note dated 03.04.2014 has suggested extended and to have the opinion of the Sr. Counsel before going for arbitration. He further observed that if NDMC Counsel is of the view that five year extension is to be granted to concessionaire, unnecessary arbitration can be avoided and Council can be informed accordingly.*
2. *The Arbitration Counsel in his opinion dated NIL has concluded his opinion as under:-*
“Thus, keeping in mind the facts of the case, it is advisable that the queriest reach an amicable settlement and get the issue resolved and save the cost of arbitration and the expense of another tender.”
3. *The Spl. Counsel has gone with the recommendations of the Chief Engineer (C-I).The matter may be placed before the authorities for further decision on the issue.*
4. *The Chief Engineer had also suggested that the matter may be pleased before the Council and as such if considered necessary, the matter may be please before the Council.*

This issues with the prior approval of L.A.

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

--NA--

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

All codal formalities & guidelines of CVC will be followed.

15. Recommendations.

The initial concession period of seven year was expired on 21.05.2013 and it is recommended to grant extension of concession period by Five years i.e. from 22.05.2013 to 21.05.2018 for the work "PPP Project for Repair/Renovation, Operation and Maintenance of 94 PTUs in NDMC area (South of Rajpath)" to M/s Supreme Advertising Pvt. Ltd. (Formerly known as M/s. Hythro Power Corporation Limited) under Clause 2.3 of agreement dated: 18.04.2006, with minimum concession fees `2,74,316/- per month and increased annually by 10% on the previous year concession fee or 19.42% of revenue earned on advertisement whichever is more with approved terms and conditions finalized by the Sub Committee.

16. Draft Council Decision:-

Resolved by the council to grant extension of concession period by Five years i.e. from 22.05.2013 to 21.05.2018 for the work "PPP Project for Repair/Renovation, Operation and Maintenance of 94 PTUs in NDMC area (South of Rajpath)" to M/s Supreme Advertising Pvt. Ltd. (Formerly known as M/s. Hythro Power Corporation Limited) under Clause 2.3 of agreement dated: 18.04.2006 with minimum concession fees `2,74,316/- per month and increased annually by 10% on the previous year concession fee or 19.42% of revenue earned on advertisement whichever is more with approved terms and conditions finalized by the Sub Committee.

COUNCIL'S DECISION