

setting, fitting and fixing in position and all other expenses necessary in and for the full and complete execution and completion of works and in accordance with good practice and recognised principles in that regard.

- 3.9 Employees of the State and Central Govt. and employees of the Public Sector Undertakings, including retired employees are covered under their respective service conditions/rules in regard to their submitting the tender. All such persons should ensure compliance to the respective/applicable conditions, rules etc. Any person not complying with those rules etc. but submitting the tender in violation of such rules, after being so noticed shall be liable for the forfeiture of the Earnest Money Deposit made with the tender, termination of Contract and sufferance on account of forfeiture of Security Deposit and sufferance of damages arising as a result of termination of Contract.

- 3.10 In consideration for having a chance to be considered for entering into a contract with the Owner, the Tenderer agrees that the Tender submitted by him shall remain valid for the period prescribed in the tender conditions, from the date of opening of the tender. The Tenderer shall not be entitled during the said validity period, to revoke or cancel the tender without the consent in writing from the Owner.**

In case the tenderer revokes or cancels the tender or varies any of terms of the tender without the Consent of the Owner, in writing, the Tenderer forfeits the right to the refund of the Earnest Money paid along with the tender.

- 3.11 The prices quoted by the Tenderer shall be firm during the validity period of the bid and Tenderer agrees to keep the bid alive and valid during the said period. The Tenderers shall particularly take note of this factor before submitting their tender(s).**

- 3.12 The works shall be carried out strictly as per approved specifications. Deviations, if any, shall have to be authorised by the Engineer-in-Charge/Site-in-Charge in writing prior to implementing deviations. The price benefit, if any, arising out of the accepted deviation shall be passed on to the Owner. The decision of Engineer-in-Charge shall be final in this matter.

- 3.13 The contractor shall make all arrangements at his own cost to transport the required materials outside and inside the working places and leaving the premises in a neat and tidy condition after completion of the job to the satisfaction of Owner. All materials except those agreed to be supplied by the Owner shall be supplied by the contractor at his own cost and the rates quoted by the Contractor should be inclusive of all royalties, rents, taxes, duties, statutory levies, if any, etc.

- 3.14 The Contractor shall not carry on any work other than the work under this Contract within the Owner's premises without prior permission in writing from the Engineer-in-Charge/Site-in-charge.

- 3.15 The Contractor shall be bound to follow and ensure compliance to all the safety and security regulations and other statutory rules applicable to the area. In the event of any damage or loss or sufferance caused due to non-observance of such rules and regulations, the contractor shall be solely responsible for the same and shall keep the Owner indemnified against all such losses and claims arising from the same.

- 3.16 At any time after acceptance of tender, the Owner reserves the right to add, amend or delete any work item, the bill of quantities at a later date or reduce the scope of work in the overall interest of the work by prior discussion and intimation to the Contractor. The decision of Owner, with reasons recorded therefor, shall be final and binding on both the Owner and the Contractor. The Contractor shall not have right to claim compensation or damage etc. in that regard. The Owner reserves the right to split the work under this contract between two or more contractors without assigning any reasons.
- 3.17 Contractor shall not be entitled to sublet, sub contract or assign, the work under this Contract without the prior consent of the Owner obtained in writing.
- 3.18 All signatures in tender document shall be dated as well as all the pages of all sections of the tender documents shall be initialed at the lower position and signed, wherever required in the tender papers by the Tenderer or by a person holding Power of Attorney authorising him to sign on behalf of the tenderer before submission of tender.
- 3.19 The tender should be quoted in English, both in figures as well as in words. The rates and amounts tendered by the Tenderer in the Schedule of rates for each item and in such a way that insertion is not possible. The total tendered amount should also be indicated both in figures and words with the signature of tenderer.
- If some discrepancies are found between the rates given in words and figures of the amount shown in the tender, the following procedure shall be applied :
- (a) When there is a difference between the rates in figures and words, the rate which corresponds to the amount worked out by the tenderer shall be taken as correct.
  - (b) When the rate quoted by the tenderer in figures and words tallies but the amount is incorrect, the rate quoted by the tenderer shall be taken as correct.
  - (c) When it is not possible to ascertain the correct rate in the manner prescribed above the rate as quoted in words shall be adopted.
- 3.20 All corrections and alterations in the entries of tender paper will be signed in full by the tenderer with date. No erasures or over writings are permissible.
- 3.21 Transfer of tender document by one intending tenderer to the another one is not permissible. The tenderer on whose name the tender has been sent only can quote.
- 3.22 The Tender submitted by a tenderer if found to be incomplete in any or all manner is liable to be rejected. The decision of the Owner in this regard is final and binding.

#### 4. DEPOSITS

##### a) EARNEST MONEY DEPOSIT (EMD)

® The tenderer will be required to pay a sum as specified in the covering letter, as earnest money deposit along with the tender either thru a crossed demand draft or a non-revokable Bank Guarantee in favour of Hindustan Petroleum Corporation Limited, from a **bank from the list of banks whose bank guarantees are acceptable to the Corporation (list enclosed)** payable at Mumbai in favour of Hindustan Petroleum Corporation Limited, Mumbai in the proforma enclosed.

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or through e-payment. The earnest money deposit will be refunded after finalisation of the contract.

- ® **Note:** Public sector enterprises and small-scale units registered with National Small Industries **Corporation** are exempted from payment of Earnest Money Deposit. Small scale units registered with National Small Industries **Corporation** should enclose a photocopy of their registration certificate with their quotation to make their quotation eligible for consideration. The Registration Certificate should remain valid during the period of the contract that may be entered into with such successful bidder. Such tenderers should ensure validity of the Registration Certificate for the purpose. **(Refer Gazette notification of the Government of India , the Ministry of Micro, Small and Medium Enterprises number S.O.2119 (E ), dated 26<sup>th</sup> June, 2020 on criteria for classifying the enterprises as micro, small and medium enterprises & Udyam registration for revised guideline.)**

b) **SECURITY DEPOSIT:**

The tenderer, with whom the contract is decided to be entered into and intimation is so given will have to make a security deposit of one percent (1%) of the total contract value in the form of account payee crossed demand draft drawn in favour of the Owner, within 15 days from the date of intimation of acceptance of their tender, failing which the Owner reserves the right to cancel the Contract and forfeit the EMD.

1% of PO/Contract value as Security deposit will be acceptable in the form of Demand draft or through e-payment upto ₹ 50,000/- and in the form of Demand draft / Bank guarantee or through e-payment beyond ₹ 50,000/-.

Composite Performance Bank Guarantee (CPBG) valid upto a period of 3 months beyond the expiry of defect liability period. Demand Draft should be drawn on Scheduled Banks, other than co-operative bank.

Quantum of Performance Bank Guarantee inclusive of Security Deposit should be as follows:

- All items (other than CVR items) : 10% of PO value
- For CVR items: ₹ 10.0 lakhs or 5% of the order value whichever is lower. Composite PBG of above value towards Performance Bank Guarantee inclusive of Security Deposit shall be accepted (in lieu of deduction of retention money of 10% from each bill); Such composite PBG shall be valid upto a period of 3 months beyond the expiry of defect liability period. Demand Draft should be drawn on Scheduled Banks (other than cooperative banks).

## 5. EXECUTION OF WORK

All the works shall be executed in strict conformity with the provisions of the contract documents and with such explanatory details, drawings, specifications and instructions as may be furnished from time to time to the Contractor by the Engineer-in-Charge/ Site-in-Charge, whether mentioned in the Contract or not. The Contractor shall be responsible for ensuring that works throughout are executed in the most proper and workman-like manner with the quality of material and workmanship in strict accordance with the specifications and to the entire satisfaction of the Engineer-in-Charge/Site-in-Charge.

The completion of work may entail working in monsoon also. The contractor must maintain the necessary work force as may be required during monsoon and plan to execute the job in such a way the entire project is completed within the contracted time schedule. No extra charges shall be payable for such work during monsoon. It shall be the responsibility of the contractor to keep the construction work site free from water during and off the monsoon period at his own cost and expenses.

For working on Sundays/Holidays, the contractor shall obtain the necessary permission from Engineer Incharge/Site Incharge in advance. The contractor shall be permitted to work beyond the normal hours with prior approval of Engineer-In-Charge/Site-In-Charge and the contractors quoted rate is inclusive of all such extended hours of working and no extra amount shall be payable by the owner on this account.

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**5.a. SETTING OUT OF WORKS AND SITE INSTRUCTIONS**

- 5.a.1. The Engineer-in-Charge/Site-in-Charge shall furnish the Contractor with only the four corners of the work site and a level bench mark and the Contractor shall set out the works and shall provide an efficient staff for the purpose and shall be solely responsible for the accuracy of such setting out.
- 5.a.2. The Contractor shall provide, fix and be responsible for the maintenance of all necessary stakes, templates, level marks, profiles and other similar things and shall take all necessary precautions to prevent their removal or disturbance and shall be responsible for consequences of such removal or disturbance should the same take place and for their efficient and timely reinstatement. The Contractor shall also be responsible for the maintenance of all existing survey marks, either existing or supplied and fixed by the Contractor. The work shall be set out to the satisfaction of the Engineer-in-Charge/Site-in-Charge. The approval thereof or joining in setting out the work shall not relieve the Contractor of his responsibility.
- 5.a.3. Before beginning the works, the Contractor shall, at his own cost, provide all necessary reference and level posts, pegs, bamboos, flags ranging rods, strings and other materials for proper layout of the work in accordance with the scheme, for bearing marks acceptable to the Engineer-in-Charge/Site-in-Charge. The Centre longitudinal or face lines and cross lines shall be marked by means of small masonry pillars. Each pillar shall have distinct marks at the centre to enable theodolite to be set over it. No work shall be started until all these points are checked and approved by the Engineer-in-Charge/Site-in-Charge in writing. But such approval shall not relieve the contractor of any of his responsibilities. The Contractor shall also provide all labour, materials and other facilities, as necessary, for the proper checking of layout and inspection of the points during construction.
- 5.a.4. Pillars bearing geodetic marks located at the sites of units of works under construction should be protected and fenced by the Contractor.
- 5.a.5. On completion of works, the contractor shall submit the geodetic documents according to which the work was carried out.
- 5.a.6. The Engineer-in-Charge/Site-in-Charge shall communicate or confirm his instructions to the contractor in respect of the executions of work in a "work site order book" maintained in the office having duplicate sheet and the authorised representative of the contractor shall confirm receipt of such instructions by signing the relevant entries in the book.
- 5.a.7. All instructions issued by the Engineer-in-Charge/Site-in-Charge shall be in writing. The Contractor shall be liable to carry out the instructions without fail.
- 5.a.8. If the Contractor after receipt of written instruction from the Engineer-in-Charge/Site-in-Charge requiring compliance within seven days fails to comply with such drawings or 'instructions' or both as the Engineer-in-Charge/Site-in-Charge may issue, owner may employ and pay other persons to execute any such work whatsoever that may be necessary to give effect to such drawings or 'instructions' and all cost and expenses incurred in connection therewith as certified by the Engineer-in-Charge/ Site-in-Charge shall be borne by the contractor or may be deducted from amounts due or that may become due to the contractor under the contract or may be recovered as a debt.

- 5.a.9. The Contractor shall be entirely and exclusively responsible for the horizontal and vertical alignment, the levels and correctness of every part of the work and shall rectify effectually any errors or imperfections therein. Such rectifications shall be carried out by the Contractor, at his own cost.
- 5.a.10. In case any doubts arise in the mind of the Contractor in regard to any expressions, interpretations, statements, calculations of quantities, supply of material rates, etc. the contractor shall refer the same to the Site-in-Charge/ Engineer-in-Charge for his clarification, instructions, guidance or clearing of doubts. The decision of the Engineer-in-Charge/Site-in-Charge shall be final and the contractor shall be bound by such a decision.
- 5.a.11. "The Contractor shall take adequate precautions, to ensure that his operations do not create nuisance or misuse of the work space that shall cause unnecessary disturbance or inconvenience to others at the work site".
- 5.a.12. "All fossils, coins articles of value of antiquity and structure or other remains of geological or archaeological discovered on the site of works shall be declared to be the property of the Owner and Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such articles or thing and shall immediately inform the Owner/ Engineer-in-Charge/Site-in-Charge."
- 5.a.13. "Contractor will be entirely and exclusively responsible to provide and maintain at his expenses all lights, guards, fencing, etc. when and where even necessary or/as required by the Engineer-in-Charge/Site-in-Charge for the protection of works or safety and convenience to all the members employed at the site or general public."

**5.b. COMMENCEMENT OF WORK**

The contractor shall after paying the requisite security deposit, commence work within 15 days from the date of receipt of the intimation of intent from the Owner informing that the contract is being awarded. The date of intimation shall be the date/day for counting the starting day/date and the ending day/date will be accordingly calculated. Penalty, if any, for the delay in execution shall be calculated accordingly.

Contractor should prepare detailed fortnightly construction programme for approval by the Engineer-in-Charge within one month of receipt of Letter Of Intent. The work shall be executed strictly as per such time schedule. The period of Contract includes the time required for testing, rectifications, if any, re-testing and completion of work in all respects to the entire satisfaction of the Engineer-in-Charge.

A Letter of Intent is an acceptance of offer by the Owner and it need not be accepted by the contractor. But the contractor should acknowledge a receipt of the purchase order within 15 days of mailing of Purchase Order and any delay in acknowledging the receipt will be a breach of contract and compensation for the loss caused by such breach will be recovered by the Owner by forfeiting earnest money deposit/bid bond.

**5.c. SUBLETTING OF WORK**

- 5.c.1. No part of the contract nor any share or interest thereof shall in any manner or degree be transferred, assigned or sublet, by the Contractor, directly or indirectly to any firm or corporation whatsoever, without the prior consent in writing of the Owner.

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- 5.c.2. At the commencement of every month the Contractor shall furnish to the Engineer-in-charge/Site-in-Charge list of all sub-contractors or other persons or firms engaged by the Contractor.
- 5.c.3 The contract agreement will specify major items of supply or services for which the Contractor proposes to engage sub-Contractor/sub-Vendor. The contractor may from time to time propose any addition or deletion from any such list and will submit the proposals in this regard to the Engineer-in-charge/Designated officer-in-charge for approval well in advance so as not to impede the progress of work. Such approval of the Engineer-in-charge/Designated officer-in-charge will not relieve the contractor from any of his obligations, duties and responsibilities under the contract.
- 5.c.4. Notwithstanding any sub-letting with such approval as resaid and notwithstanding that the Engineer-in-Charge shall have received copies of any sub-contract, the Contractor shall be and shall remain solely to be responsible for the quality and proper and expeditious execution of the works and the performance of all the conditions of the contract in all respects as if such subletting or sub-contracting had not taken place and as if such work had been done directly by the Contractor.
- 5.c.5 Prior approval in writing of the Owner shall be obtained before any change is made in the constitution of the contractor/Contracting agency otherwise contract shall be deemed to have been allotted in contravention of clause entitled "sub-letting of works" and the same action may be taken and the same consequence shall ensue as provided in the clause of "sub- letting of works".

**5.d EXTENSION OF TIME**

- 1) If the Contractor anticipates that he will not be able to complete the work within the contractual delivery/ completion date (CDD), then the Contractor shall make a request for grant of time extension clearly specifying the reasons for which he seeks extension of time and demonstrating as to how these reasons were beyond the control of the contractor or attributable to the Owner. This request should be made well before the expiry of the Contractual Delivery/ Completion Date (CDD).
- 2) If such a request for extension is received with a Bank Guarantee for the full Price Reduction amount calculated on the Total Contract Value, the concerned CGM of the Owner shall grant a Provisional extension of time, pending a decision on the request.
- 3) The concerned CGM of the Owner shall expeditiously decide upon the request for time extension and decide the levy of price reduction within a maximum period of 6 months from the CDD or date of receipt of the request, whichever is earlier.
- 4) Grant of any extension of time shall be by means of issuance of a Change Order.
- 5) In order to avoid any cash crunch to the Contractor, a Bank Guarantee could be accepted against Price Reduction, as stated above. Once a decision is taken, the Price Reduction shall be recovered from any pending bills or by encashment of the BG. Any balance sum of Contractor or the BG (if Price Reduction is fully recovered from the bills) shall be promptly refunded/returned to the Contractor.



**5.e. SUSPENSION OF WORKS**

- 5.e.1. Subject to the provisions of this contract, the contractor shall if ordered in writing by the Engineer- in-Charge/Site-in-Charge for reasons recorded suspend the works or any part thereof for such period and such time so ordered and shall not, after receiving such, proceed with the work therein ordered to suspended until he shall have received a written order to re-start. The Contractor shall be entitled to claim extension of time for that period of time the work was ordered to be suspended. Neither the Owner nor the Contractor shall be entitled to claim compensation or damages on account of such an extension of time.
- 5.e.2. In case of suspension of entire work, ordered in writing by Engineer-in-Charge/Site-in-Charge, for a period of 30 days, the Owner shall have the option to terminate the Contract as provided under the clause for termination. The Contractor shall not be at liberty to remove from the site of the works any plant or materials belonging to him and the Employer shall have lien upon all such plant and materials.
- 5.e.3. The contractor shall, in case of suspension have the right to raise a dispute and have the same arbitrated but however, shall not have the right to have the work stopped from further progress and completion either by the owner or through other contractor appointed by the owner.

**5.f. OWNER MAY DO PART OF WORK**

Notwithstanding anything contained elsewhere in this contract, the owner upon failure of the Contractor to comply with any instructions given in accordance with the provisions of this contract, may instead of Contract and undertaking charge of entire work, place additional labour force, tools, equipment and materials on such parts of the work, as the Owner may decide or engage another Contractor to carry out the balance of work. In such cases, the Owner shall have the right to deduct from the amounts payable to the Contractor the difference in cost of such work and materials with ten percent overhead added to cover all departmental charges. Should the total amount thereof exceed the amount due to the contractor, the Contractor shall pay the difference to the Owner within 15 days of making demand for payment failing which the Contractor shall be liable to pay interest at 24% p.a. on such amounts till the date of payment.

**5.g. INSPECTION OF WORKS**

- 5.g.1. The Engineer-in-Charge/Site-in-Charge and Officers from Central or State Government will have full power and authority to inspect the works at any time wherever in progress, either on the site or at the Contractor's premises/workshops of any person, firm or corporation where work in connection with the contract may be in hand or where the materials are being or are to be supplied, and the Contractor shall afford or procure for the Engineer-in-Charge/Site-in-Charge every facility and assistance to carry out such inspection. The Contractor shall, at all times during the usual working hours and at all other times at which reasonable notice of the intention of the Engineer-in-Charge/Site-in-Charge or his representative to visit the works shall have been given to the Contractor, either himself be present to receive orders and instructions, or have a responsible agent, duly accredited in writing, present for the purpose. Orders given to the Contractor's agent shall be considered to have the same force as if they had been given to the Contractor himself. The Contractor shall give not

less than seven days notice in writing to the Engineer-in-Charge/Site-in-Charge before covering up or otherwise placing beyond reach of inspection and measurement any work in order that the same may be inspected and measured. In the event of breach of above, the same shall be uncovered at Contractor's expense for carrying out such measurement and/or inspection.

- 5.g.2. No material shall be removed and despatched by the Contractor from the site without the prior approval in writing of the Engineer-in-charge. The contractor is to provide at all times during the progress of the work and the maintenance period proper means of access with ladders, gangways, etc. and the necessary attendance to move and adapt as directed for inspection or measurements of the works by the Engineer-in-Charge/Site-in-Charge.

#### **5.h. SAMPLES**

- 5.h.1. The contractor shall furnish to the Engineer-in-charge/Site-in-Charge for approval when requested or required adequate samples of all materials and finishes to be used in the work.
- 5.h.2. Samples shall be furnished by the Contractor sufficiently in advance and before commencement of the work so as the Owner can carry out tests and examinations thereof and approve or reject the samples for use in the works. All material samples furnished and finally used/applied in actual work shall fully be of the same quality of the approved samples.

#### **5.i. TESTS FOR QUALITY OF WORK**

- 5.i.1. All workmanship shall be of the respective kinds described in the contract documents and in accordance with the instructions of the Engineer-in-Charge / Site-in-Charge and shall be subjected from time to time to such tests at Contractor's cost as the Engineer-in-Charge/Site-in-Charge may direct at the place of manufacture or fabrication or on the site or at all or any such places. The Contractor shall provide assistance, instruments, labour and materials as are normally required for examining, measuring and testing any workmanship as may be selected and required by the Engineer-in-Charge/Site-in-Charge.
- 5.i.2. All the tests that will be necessary in connection with the execution of the work as decided by the Engineer-in-charge/Site-in-Charge shall be carried out at the contractors cost and expenses.
- 5.i.3. If any tests are required to be carried out in connection with the work or materials or workmanship to be supplied by the owner, such tests shall be carried out by the Contractor as per instructions of Engineer-in-Charge/Site-in-Charge and expenses for such tests, if any, incurred by the contractor shall be reimbursed by the Owner. The contractor should file his claim with the owner within 15 (fifteen) days of inspection/test and any claim made beyond that period shall lapse and be not payable.

#### **5.j. ALTERATIONS AND ADDITIONS TO SPECIFICATIONS, DESIGNS AND WORKS**

- 5.j.1. The Engineer-in-Charge/Site-in-Charge shall have powers to make any alterations, additions and/or substitutions to the schedule of quantities, the original



specifications, drawings, designs and instructions that may become necessary or advisable or during the progress of the work and the Contractor shall be bound to carryout such altered/extra/new items of work in accordance with instructions which may be given to him in writing signed by the Engineer-in-Charge/Site- in-Charge. Such alterations, omissions, additions or substitutions shall not invalidate the contract. The altered, additional or substituted work which the Contractor may be directed to carryon in the manner as part of the work shall be carried out by the Contractor on the same conditions in all respects on which he has agreed to do the work. The time for completion of such altered added and/or substituted work may be extended for that part of the particular job. The rates for such additional altered or substituted work under this Clause shall, be worked out in accordance with the following provisions:

- 5.j.2. If the rates for the additional, altered or substituted work are specified in the contract for similar class of work, the Contractor is bound to carryout the additional, altered or substituted work at the same rates as are specified in the contract.
- 5.j.3. If the rates for the additional, altered or substituted work are not specifically provided in the contract for the work, the rates will be derived from the rates for similar class of work as are specified in the contract for the work. In the opinion of the Engineer-in- Charge/Site-in-Charge as to whether or not the rates can be reasonably so derived from the items in this contract, will be final and binding on the Contractor.
- 5.j.4. If the rates for the altered, additional or substituted work cannot be determined in the manner specified above, then the Contractor shall, within seven days of the date of receipt of order to carry out the work, inform the Engineer-in-Charge/ Site-in-Charge of the rate at which he intends to charge for such class of work, supported by analysis of the rate or rates claimed and the Engineer-In-Charge/ Site-in-Charge shall determine the rates on the basis of the prevailing market rates for both material and labour plus 10% to cover overhead and profit of labour rates and pay the Contractor accordingly. The opinion of the Engineer-in-Charge/Site-in-Charge as to current market rates of materials and the quantum of labour involved per unit of measurement will be final and binding on the contractor.
- 5.j.5. In case of any item of work for which there is no specification supplied by the Owner and is mentioned in the tender documents, such work shall be carried out in accordance with Indian Standard Specifications and if the Indian Standard Specifications do not cover the same, the work should be carried out as per standard Engineering Practice subject to the approval of the Engineer-in-Charge/ Site-in-Charge.

#### **5.k. PROVISIONAL ACCEPTANCE**

Acceptance of sections of the works for purposes of equipment erection, piping, electrical work and similar usages by the Owner and payment for such work or parts of work shall not constitute a waiver of any portion of this contract and shall not be construed so as to prevent the Engineer from requiring replacement of defective work that may become apparent after the said acceptance and also shall not absolve the Contractor of the obligations under this contract. It is made clear that such an acceptance does not indicate or denote or establish to the fact of execution of that work or the Contract until the work is completed in full in accordance with the provisions of this Contract.

**5.l. COMPLETION OF WORK AND COMPLETION CERTIFICATE**

As soon as the work is completed in all respects, the contractor shall give notice of such completion to the site in charge or the Owner and within thirty days of receipt of such notice the site in charge shall inspect the work and shall furnish the contractor with a certificate of completion indicating:

- a) defects, if any, to be rectified by the contractor
- b) items, if any, for which payment shall be made in reduced rates
- c) the date of completion.

**5.m. USE OF MATERIALS AND RETURN OF SURPLUS MATERIALS**

5.m.1. Notwithstanding anything contained to the contrary in any or all of the clauses of this contract, where any materials for the execution of the contract are procured with the assistance of Government either by issue from Government stocks or procurement made under orders or permits or licences issued by Government, the contractor shall use the said materials economically and solely for the purpose of the contract and shall not dispose them of without the permission of the Owner.

5.m.2. All surplus(serviceable) or unserviceable materials that may be left over after the completion of the contract or at its termination for any reason whatsoever, the Contractor shall deliver the said product to the Owner without any demur. The price to be paid to the Contractor, if not already paid either in full or in part, however, shall not exceed the amount mentioned in the Schedule of Rates for such material and in cases where such rates are not so mentioned, shall not exceed the CPWD scheduled rates. In the event of breach of the aforesaid condition the contractor shall become liable for contravention of the terms of the Contract.

5.m.3. The surplus (serviceable) and unserviceable products shall be determined by joint measurement. In case where joint measurement has failed to take place, the Owner may measure the same and determine the quantity.

5.m.4. It is made clear that the Owner shall not be liable to take stock and keep possession and pay for the surplus and unserviceable stocks and the Owner may direct the Contractor to take back such material brought by the Contractor and becoming surplus and which the Owner may decide to keep and not to pay for the same.

**5.n. DEFECT LIABILITY PERIOD**

The contractor shall guarantee the work executed for a period of 12 months from the date of completion of the job. Any damage or defect that may arise or lie undiscovered at the time of completion of the job shall be rectified or replaced by the contractor at his own cost. The decision of the Engineer In-charge/Site-Incharge/Owner shall be the final in deciding whether the defect has to be rectified or replaced.

Equipment or spare parts replaced under warranty/guarantees shall have further warranty for a mutually agreed period from the date of acceptance.

The owner shall intimate the defects noticed in writing by a Registered A.D. letter or otherwise and the contractor within 15 days of receipt of the intimation shall start the rectification work and complete within the time specified by the owner failing which the owner will get the defects rectified by themselves or by any other contractor and the expenses incurred in getting the same done shall be paid by the Contractor under the provision of the Contract.

Thus, defect liability is applicable only in case of job/works contract (civil, mechanical, electrical, maintenance etc. ) where any damage or defect may arise in future (i.e. within 12 months from the date of completion of job) or lie undiscovered at the time of completion of job.

In other words, in case of service contracts (like car hire etc.) where there is no question of damage or defect arising in future, the defect liability clause is not applicable.

- ® **Equipment or spare parts replaced under warranty/guarantees shall have further warranty for 12 months from the date of acceptance. However, in no case will the warranty exceed 24 months from the date of start of the original warranty. (Refer Annexure 22 – Govt. Guideline Sr. No. 14)**

#### **5.o. DAMAGE TO PROPERTY**

5.o.1. Contractor shall be responsible for making good to the satisfaction of the Owner any loss of and any damage to all structures and properties belonging to the Owner or being executed or procured by the Owner or of other agencies within the premises of the work of the Owner, if such loss or damage is due to fault and/or the negligence or willful acts or omission of the Contractor, his employees, agents, representatives or sub-contractors.

5.o.2. The Contractors shall indemnify and keep the Owner harmless of all claims for damage to Owner's property arising under or by reason of this contract.

#### ® **5.p. LIMITATION OF LIABILITY**

Notwithstanding anything contrary contained herein, the aggregate total liability of Seller, excluding his liability towards infringement of patent, trade mark or industrial design rights under the contract or otherwise shall be limited to 100% of value of Purchase order. However, neither party shall be liable to the other party for any indirect and consequential damages, loss of profits or loss of production. (Refer Annexure 22 – Govt. Guideline Sr. No. 13)

#### **6. DUTIES AND RESPONSIBILITIES OF CONTRACTOR**

##### **6.a. EMPLOYMENT LIABILITY TOWARDS WORKERS EMPLOYED BY THE CONTRACTOR**

6.a.1 The Contractor shall be solely and exclusively responsible for engaging or employing persons for the execution of work. All persons engaged by the contractor shall be on Contractor's payroll and paid by Contractor. All disputes or differences between the Contractor and his/their employees shall be settled by Contractor.

6.a.2. Owner has absolutely no liability whatsoever concerning the employees of the Contractor. The Contractor shall indemnify Owner against any loss or damage or liability arising out of or in the course of his/their employing persons or relation with his/their employees. The Contractor shall make regular and full payment of wages and on any complaint by any employee of the Contractor or his sub contractor regarding non-payment of wages, salaries or other dues, Owner reserves the right to make payments directly to such employees or sub-contractor of the Contractor and recover the amount in full from the bills of the

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Contractor and the contractor shall not claim any compensation or reimbursement thereof. The Contractor shall comply with the Minimum Wages Act applicable to the area of work site with regard to payment of wages to his employees and also to employees of his sub contractor.

- 6.a.3. The Contractor shall advise in writing or in such appropriate way to all of his employees and employees of sub-contractors and any other person engaged by him that their appointment/employment is not by the Owner but by the Contractor and that their present appointment is only in connection with the construction contract with Owner and that therefore, such an employment/appointment would not enable or make them eligible for any employment/appointment with the Owner either temporarily or/and permanent basis.

**6.b. NOTICE TO LOCAL BODIES**

The contractor shall comply with and give all notices required under any Government authority, instruction, rule or order made under any act of parliament, state laws or any regulations or by-laws of any local authority relating to the works.

**6.c. FIRST AID AND INDUSTRIAL INJURIES**

- 6.c.1 Contractor shall maintain first aid facility for his employees and those of his sub-contractors.
- 6.c.2. Contractor shall make arrangements for ambulance service and for the treatment of all types of injuries. Names and telephone numbers of those providing such services shall be furnished to Owner prior to start of construction and their name board shall be prominently displayed in Contractor's field office.
- 6.c.3. All industrial injuries shall be reported promptly to owner and a copy of contractor's report covering each personal injury requiring the attention of a physician shall be furnished to the Owner.

**6.d. SAFETY CODE**

- 6.d.1. The Contractor shall at his own expenses arrange for the Safety provisions as may be necessary for the execution of the work or as required by the Engineer-in-Charge in respect of all labours directly or indirectly employed for performance of the works and shall provide all facilities in connections therewith. In case the contractor fails to make arrangements and provide necessary facilities as aforesaid, the Owner shall be entitled to do so and recover the cost thereof from the Contractor.
- 6.d.2. From the commencement to the completion of the works, the contractor shall take full responsibility for the care thereof and of all the temporary works (defined as meaning all temporary works of every kind required in or for the execution, completion or maintenance of the works). In case damage, loss or injury shall happen to the works or to any part thereof or to temporary works or to any cause whatsoever repair at his (Contractor's) own cost and make good the same so that at the time of completion, the works shall be in good order and condition and in conformity in every respect with the requirement of the contract and Engineer-in-Charge's instructions.

- 6.d.3. In respect of all labour, directly or indirectly employed in the work for the performance of the Contractor's part of this agreement, the contractor shall at his own expense arrange for all the safety provisions as per relevant Safety Codes of C.P.W.D Bureau of Indian Standards, the Electricity Act/I.E. Rules. The Mines Act and such other Acts as applicable.
- 6.d.4. The Contractor shall observe and abide by all fire and safety regulations of the Owner. Before starting construction work, the Contractor shall consult with Owner's Safety Engineer or Engineer-in-Charge/Site-in-Charge and must make good to the satisfaction of the Owner any loss or damage due to fire to any portion of the work done or to be done under this agreement or to any of the Owner's existing property.
- 6.d.5. The Contractor will be fully responsible for complying with all relevant provisions of the Contract Labour Act and shall pay rates of Wages and observe hours of work/conditions of employment according to the rules in force from time to time.
- 6.d.6. The Contractor will be fully responsible for complying with the provision including documentation and submission of reports on the above to the concerned authorities and shall indemnify the Corporation from any such lapse for which the Government will be taking action against them.
- 6.d.7. Owner shall on a report having been made by an inspecting Office as defined in the Contract Labour Regulations have the power to deduct from the money due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker(s) by reasons of non-fulfillment of conditions of contract for the benefit of workers no-payment of wages or of deductions made from his or their wages which are not justified by the terms of contract or non observance of the said contractor's labour Regulation.

#### **6.e. INSURANCE AND LABOUR**

Contractor shall at his own expense obtain and maintain an insurance policy with a Nationalised Insurance Company to the satisfaction of the Owner as provided hereunder.

##### **6.e.1. EMPLOYEES STATE INSURANCE ACT**

- i. The Contractor agrees to and does hereby accept full and exclusive liability for the compliance with all obligations imposed by Employees State Insurance Act, 1948, and the Contractor further agrees to defend indemnify and hold Owner harmless from any liability or penalty which may be imposed by the Central, State or local authority by reason of any asserted violation by Contractor, or sub-contractor of the Employees' State Insurance Act, 1948 and also from all claims, suits or proceedings that may be brought against the Owner arising under, growing out of or by reason of the work provided for by this contract whether brought by employees of the Contractor, by third parties or by Central or State Government authority or any political sub-division thereof.
- ii. The Contractor agrees to file with the Employees State Insurance Corporation, the Declaration forms and all forms which may be required in respect of the Contractor's or sub-contractor's employee whose aggregate emuneration is within the specified limit and who are employed in the work provided or those covered by ESI Act under any amendment to the Act from time to time.

The Contractor shall deduct and secure the agreement of the sub-contractor to deduct the employee's contribution as per the first schedule of the Employee's State Insurance Act from wages and affix the employee's contribution cards at wages payment intervals. The Contractor shall remit and secure the agreement of the sub-contractor to remit to the State Bank of India, Employee's State Insurance Corporation Account, the Employee's contribution as required by the Act.

- ii. The Contractor agrees to maintain all records as required under the Act in respect of employees and payments and the Contractor shall secure the agreement of the sub-contractor to maintain such records. Any expenses incurred for the contributions, making contribution or maintaining records shall be to the Contractor's or sub-contractor's account.
- iv. The Owner shall retain such sum as may be necessary from the total contract value until the Contractor shall furnish satisfactory proof that all contributions as required by the Employees State Insurance Act, 1948, have been paid.

**v. WORKMAN'S COMPENSATION AND EMPLOYEE'S LIABILITY INSURANCE**

Provide Insurance for all the Contractor's employees engaged in the performance of this contract. If any of the work is sublet, the Contractor shall ensure that the sub-contractor provides workmen's compensation and Employer's Liability Insurance for the latter's employees who are not covered under the Contractor's insurance.

**vi. AUTOMOBILE LIABILITY INSURANCE**

Contractor shall take out an Insurance to cover all risks to Owner for each of his vehicles plying on works of this contract and these insurances shall be valid for the total contract period. No extra payment will be made for this insurance. Owner shall not be liable for any damage or loss not made good by the Insurance Company, should such damage or loss result from unauthorised use of the vehicle. The provisions of the Motor Vehicle Act would apply.

**vii. FIRE INSURANCE**

Contractor shall within two weeks after award of contract insure the Works, Plant and Equipment and keep them insured until the final completion of the Contract against loss or damage by accident, fire or any other cause with an insurance company to be approved by the Employer/Consultant in the joint names of the Employer and the Contractor (name of the former being placed first in the Policy). Such Policy shall cover the property of the Employer only.

**6.e.2. ANY OTHER INSURANCE REQUIRED UNDER LAW OR REGULATION OR BY**

- i. Contractor shall also provide and maintain any and all other insurance which may be required under any law or regulations from time to time. He shall also carry and maintain any other insurance which may be required by the Owner.



- ii. The aforesaid insurance policy/policies shall provide that they shall not be cancelled till the Engineer-in-Charge has agreed to their cancellation.
  - iii. The Contractor shall satisfy to the Engineer-in-Charge/Site-in-Charge from time to time that he has taken out all insurance policies referred to above and has paid the necessary premium for keeping the policies alive till the expiry of the defects liability period.
  - iv. The contractor shall ensure that similar insurance policies are taken out by his sub-contractor (if any) and shall be responsible for any claims or losses to the Owner resulting from their failure to obtain adequate insurance protections in connection thereof. The contractor shall produce or cause to be produced by his sub-contractor (if any) as the case may be, the relevant policy or policies and premium receipts as and when required by the Engineer-in-Charge/Site-in-Charge.
- ® v. **Contractor shall at his own expense cover all the workmen engaged under him under “Pradhan Mantri Surksha Bima Yojana (PMSBY)” and submit proof of the same to HPCL.**

### 6.e.3. LABOUR AND LABOUR LAWS

- i. The contractor shall at his own cost employ persons during the period of contract and the persons so appointed shall not be construed under any circumstances to be in the employment of the Owner.
- ii. All payments shall be made by the contractor to the labour employed by him in accordance with the various rules and regulations stated above. The contractor shall keep the Owner indemnified from any claims whatsoever inclusive of damages/costs or otherwise arising from injuries or alleged injuries to or death of a person employed by the contractor or damages or alleged damages to the property.
- iii. No labour below the age of eighteen years shall be employed on the work. The Contractor shall not pay less than what is provided under the provisions of the contract labour (Regulations and Abolition) Act, 1970 and the rules made thereunder and as may be amended from time to time. He shall pay the required deposit under the Act appropriate to the number of workman to be employed by him or through sub contractor and get himself registered under the Act. He shall produce the required Certificates to the Owner before commencement of the work. The Owner recognises only the Contractor and not his sub contractor under the provisions of the Act. The Contractor will have to submit daily a list of his workforce. He will also keep the wage register at the work site or/and produce the same to the Owner, whenever desired. A deposit may be taken by the Owner from the Contractor to be refunded only after the Owner is satisfied that all workmen employed by the Contractor have been fully paid for the period of work in Owner's premises at rates equal to or better than wages provided for under the Minimum Wages Act. The contractor shall be responsible and liable for any complaints that may arise in this regard and the consequences thereto.

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iv. The Contractor will comply with the provisions of the Employee's Provident Fund Act and the Family Pension Act as may be applicable and as amended from time to time.

v. The Contractor will comply with the provisions of the payment of Gratuity Act, 1972, as may be applicable and as amended from time to time.

vi. **IMPLEMENTATION OF APPRENTICES ACT, 1961**

The Contractor shall comply with the provisions of the Apprentices Act, 1961 and the Rules and Orders issued thereunder from time to time. If he fails to do so, his failure will be a breach of the contract and the Engineer-in-Charge may, at his discretion, cancel the contract. The Contractor shall also be liable for any pecuniary liability arising on account of any violation by him of the provision of the Act.

vii. **MODEL RULES FOR LABOUR WELFARE**

The Contractor shall at his own expenses comply with or cause be complied with Model rules for Labour Welfare as appended to those conditions or rules framed by the Government from time to time for the protection of health and for making sanitary arrangements for worker employed directly or indirectly on the works. In case the contractor fails to make arrangements as aforesaid the Engineer-in-Charge/Site-in-Charge shall be entitled to do so and recover the cost thereof from the contractor.

**6.f. DOCUMENTS CONCERNING WORKS**

6.f.1. All documents including drawings, blue prints, tracings, reproducible models, plans, specifications and copies, thereof furnished by the Owner as well as all drawings, tracings, reproducibles, plans, specifications design calculations etc. prepared by the contractor for the purpose of execution of works covered in or connected with this contract shall be the property of the Owner and shall not be used by the contractor for any other work but are to be delivered to the Owner at the completion or otherwise of the contract.

6.f.2. The Contractor shall keep and maintain secrecy of the documents, drawings etc. issued to him for the execution of this contract and restrict access to such documents, drawings etc. and further the Contractor shall execute a SECRECY agreement from each or any person employed by the Contractor having access to such documents, drawings etc. The Contractor shall not issue drawings and documents to any other agency or individual without the written approval by the Engineer-in-Charge/Site-in-Charge.

6.f.3. Contractor will not give any information or document etc. concerning details of the work to the press or a news disseminating agency without prior written approval from Engineer-in-charge/Site-in-Charge. Contractor shall not take any pictures on site without written approval of Engineer-in-Charge/Site-in-Charge.

**7. PAYMENT OF CONTRACTOR'S BILLS**

- 7.1. **Payments will be made against Running Accounts bills certified by the Owner's Engineer-in-Charge/Site-in-Charge within 15 days from the date of receipt of the bill..**
- 7.2. Running Account Bills and the final bill shall be submitted by the Contractor together with the duly signed measurements sheet(s) to the Engineer-in-Charge/ Site-in-Charge of the Owner in quadruplicate for certification.
- The Bills shall also be accompanied by quantity calculations in support of the quantities contained in the bill along with cement consumption statement, actual/theoretical, wherever applicable duly certified by the Engineer-in-Charge/ Site-in-Charge of the Owner.
- 7.3. All running account payments shall be regarded as on account payment(s) to be finally adjusted against the final bill payment. Payment of Running Account Bill(s) shall not determine or affect in any way the rights of the Owner under this Contract to make the final adjustments of the quantities of material, measurements of work and adjustments of amounts etc. in the final bill.
- 7.4. The final bill shall be submitted by the Contractor within one month of the date of completion of the work fully and completely in all respects. If the Contractor fails to submit the final bill accordingly Engineer-in-Charge/Site-in-Charge may make the measurement and determine the total amount payable for the work carried out by the Contractor and such a certification shall be final and binding on the Contractor. The Owner/Engineer- in-Charge/Site-in-Charge may take the assistance of an outside party for taking the measurement, the expenses of which shall be payable by the Contractor.
- 7.5. Payment of final bill shall be made within 30 days from the date of receipt of the certified bill by the Disbursement Section of the owner.
- 7.6 **Wherever possible, payment shall be tendered to the contractor in electronic mode (e-payment) through any of the designated banks. The contractor will comply by furnishing full particulars of Bank account (mandate) to which the payments will be routed. Owner reserves the right to make payment in any alternate mode also.**

**7.a. MEASUREMENT OF WORKS**

- 7.a.1. All measurements shall be in metric system. All the works will be jointly measured by the representative of the Engineer-in-Charge/Site-in-Charge and the Contractor or their authorised agent progressively. Such measurement will be recorded in the Measurement Book/Measurement Sheet by the Contractor or his authorised representative and signed in token of acceptance by the Owner or their authorised representative.
- 7.a.2. For the purpose of taking joint measurement, the Contractor/representative shall be bound to be present whenever required by the Engineer-in-Charge/Site-in-Charge.
- If, however, they are absent for any reasons whatsoever, the measurement will be taken by the Engineer-in-Charge/Site-in-Charge or his representative and the same would be deemed to be correct and binding on the Contractor.
- 7.a.3. In case of any dispute as to the mode of measurement for any item of work, the latest Indian Standard Specifications shall be followed. In case of any further dispute on the same the same shall be as per the certification of an

outside qualified Engineer/ Consultant. Such a measurement shall be final and binding on the Owner and the Contractor.

#### **7.b. BILLING OF WORKS EXECUTED**

The Contractor will submit a bill in approved proforma in quadruplicate to the Engineer-in-Charge/Site-in-Charge of the work giving abstract and detailed measurement for the various items executed during a month, before the expiry of the first week of the succeeding month. The Engineer-in-Charge/Site-in-Charge shall take or cause to be taken the requisite measurements for the purpose of having the bill verified and/or checked before forwarding the same to the disbursement office of the Owner for further action in terms of the Contract and payment thereafter. The Engineer-in-Charge/Site-in-Charge shall verify the bills within 7 days of submission of the Bill by the Contractor.

#### **7.c. RETENTION MONEY**

10% of the total value of the Running Account and Final Bill will be deducted and retained by the Owner as retention money on account of any damage/defect liability that may arise for the period covered under the defect liability period clause of the Contract free of interest. Any damage or defect that may arise or lie undiscovered at the time of issue of completion certificate connected in any way with the equipment or materials supplied by contractor or in workmanship shall be rectified or replaced by the contractor at his own expense failing which the Owner shall be entitled to rectify the said damage/defect from the retention money. Any excess of expenditure incurred by the Owner on account of damage or defect shall be payable by the Contractor. The decision of the Owner in this behalf shall not be liable to be questioned but shall be final and binding on the Contractor.

Thus, deduction towards retention money is applicable only in case of job/works contracts (civil, mechanical, electrical, maintenance etc.) where any damage or defect may arise in future (i.e. within 12 months from the date of completion of job) or lie undiscovered at the time of issue of completion certificate.

#### **7.d. STATUTORY LEVIES**

7.d.1 The Contractor accepts full and exclusive liability for the payment of any and all taxes, duties, cess, levies and statutory payments payable under all or any of the statutes etc.

Variations of taxes and duties arising out of the amendments to the Central / State enactments, in respect of sale of goods / services covered under this bid shall be to HPCL's account, so long as :

- They relate to the period after the opening of the price bid, but before the contracted completion period (excluding permitted extensions due to delay on account of the contractors, if any) or the actual completion period, whichever is earlier; and
- The vendor furnishes documentary evidence of incurrence of such variations, in addition to the invoices/documents for claiming Cenvat /Input Tax credit, wherever applicable.

All contributions and taxes for unemployment compensation, insurance and old age pensions or annuities now or hereafter imposed by Central or State Governmental authorities which are imposed with respect to or covered by the wages, salaries or other compensations paid to the persons employed by the Contractor and the Contractor shall be responsible for the compliance with all obligations and restrictions imposed by the Labour Law or any other law affecting employer-employee relationship and the Contractor further agrees to comply and to secure the compliance of all sub-contractors with all applicable Central, State, Municipal and local laws, and regulations and requirements of any Central, State or Local Government agency or authority.

Contractor further agrees to defend, indemnify and hold harmless from any liability or penalty which may be imposed by the Central, State or Local authorities by reason of any violation by Contractor or sub-contractor of such laws, regulations or requirements and also from all claims, suits or proceedings that may be brought against the Owner arising under, growing out of, or by reasons of the work provided for by this contract by third parties, or by Central or State Government authority or any administrative sub-division thereof. The Contractor further agrees that in case any such demand is raised against the Owner, and Owner has no way but to pay and pays/makes payment of the same, the Owner shall have the right to deduct the same from the amounts due and payable to the Contractor. The Contractor shall not raise any demand or dispute in respect of the same but may have recourse to recover/receive from the concerned authorities on the basis of the Certificate of the Owner issued in that behalf.

- 7.d.2. **The rates quoted should be inclusive of all taxes. However, wherever a tax to be deducted at source the same will be deducted from the bills of the Contractor and paid to the concerned authorities. The proof of such payments of tax on works contract will be furnished to the contractor.**

**The vendor shall comply with all the provisions of the GST Act/Rules/requirements like providing of tax invoices, payment of taxes to the authorities within the due dates, filing of returns within the due dates etc. to enable HPCL to take Input Tax Credit. In case of imports, vendor shall provide import documents and invoice fulfilling the requirement of Customs Act and Rules. Vendor will be fully responsible for complying with the Customs provisions to enable HPCL to take Input Tax Credit.**

**In case, HPCL is not able to take Input Tax Credit due to any noncompliance/default/negligence of the seller of goods/service provider, the same shall be recovered from the pending bills/dues (including security deposit, BG etc.)**

**Vendor shall be responsible to indemnify the Corporation for any loss, direct or implied accrued to the Corporation on account of supplier/service provider failure to discharge his statutory liabilities like paying taxes on time, filing appropriate returns within the prescribed time etc.**

- 7.d.3. **Income tax will be deducted at source as per rules at prevailing rates, unless certificate, if any, for deduction at lesser rate or nil deduction is submitted by the Contractor from appropriate authority.**

- 7.d.4 The contractor shall provide accurate particulars of PAN number as required, under Section 206AA of Income Tax Act 1961.
- 7.d.5 **The contractors having their 'tax residency status' outside India shall provide Tax Residency Certificate (TRC), issued by Government of the Country or the specified territory where the Contractor is a Resident. Rule 21AB of the Income Tax Rules, 1962 has prescribed the contents of a TRC. This would enable the Corporation to deduct tax at source by duly considering the 'treaty relief', if any, under Double Taxation Avoidance Agreement (DTAA) entered into between GOI and the respective country/specified territory in which the Contractors' 'tax residency status' is currently in force.**
- 7.d.6 **Anti-Profiteering Clause – GST Act anti-profiteering provisions mandates that any reduction in tax rates or benefits of input tax credits be passed on to the consumer by way of commensurate reduction in prices. Vendors to take note of the same and pass such benefits while quoting their price.**

**7.e. MATERIALS TO BE SUPPLIED BY CONTRACTOR**

- 7.e.1. The Contractor shall procure and provide the whole of the materials required for construction including tools, tackles, construction plant and equipment for the completion and maintenance of the works except the materials viz. steel and cement which may be agreed to be supplied as provided elsewhere in the contract. The contractor shall make arrangement for procuring such materials and for the transport thereof at their own cost and expenses.
- 7.e.2. The Owner may give necessary recommendation to the respective authority if so desired by the Contractor but assumes no responsibility of any nature. The Contractor shall procure materials of ISI stamp/certification and supplied by reputed suppliers borne on DGS&D list.
- 7.e.3. All materials procured should meet the specifications given in the tender document. The Engineer-in-charge may, at his discretion, ask for samples and test certificates for any batch of any materials procured. Before procuring, the Contractor should get the approval of Engineer-in-Charge/Site-in-Charge for any materials to be used for the works.
- 7.e.4. Manufacturer's certificate shall be submitted for all materials supplied by the Contractor. If, however, in the opinion of the Engineer-in-Charge/Site-in-Charge any tests are required to be conducted on the material supplied by the Contractor, these will be arranged by the Contractor promptly at his own cost.

**7.f. MATERIALS TO BE SUPPLIED BY THE OWNER**

- 7.f.1. Steel and Cement maybe supplied by the Owner to the contractor against payment by Contractor from either godown or from the site or within work premises itself and the contractor shall arrange for all transport to actual work site at no extra cost.
- 7.f.2. The contractor shall bear all the costs including loading and unloading, carting from issue points to work spot storage, unloading, custody and handling and stacking the same and return the surplus steel and cement to the Owner's storage point after completion of job.



- 7.f.3. The contractor will be fully accountable for the steel and cement received from the Owner and contractor will give acknowledgement/receipt for quantity of steel and cement received by him each time he uplifts cement from Owner's custody.
- 7.f.4. For all computation purposes, the theoretical cement consumption shall be considered as per CPWD standards.
- 7.f.5. Steel and Cement as received from the manufacturer/stockists will be issued to the contractor. Theoretical weight of cement in a bag will be considered as 50 Kg. Bags weighing upto 4% less shall be accepted by the contractor and considered as 50 Kg. per bag. Any shortage in the weight of any cement bag by more than 4% will be to the Owner's account only when pointed out by the Contractor and verified by Engineer-in-Charge/Site in Charge at the time of Contract or taking delivery.
- 7.f.6. The contractor will be required to maintain a stock register for receipt, issuance and consumption of steel and cement at site. Cement will be stored in a warehouse at site. Requirement of cement on any day will be taken out of the warehouse. Cement issued shall be regulated on the basis of FIRST RECEIPT to go as FIRST ISSUE.
- 7.f.7. Empty cement bag shall be the property of the Contractor. Contractor shall be penalised for any excess/under consumption of cement. The penal rate will be twice the rate of issue of cement for this work.
- 7.f.8. All the running bills as well as the final bills will be accompanied by cement consumption statements giving the detailed working of the cement used, cement received and stock-on-hand.
- 7.f.9. The Contractor will be fully responsible for safe custody of cement once it is received by him and during transport. Owner will not entertain any claims of the contractor for theft, loss or damage to cement while in their custody.
- 7.f.10. The contractor shall not remove from the site any cement bags at any time.
- 7.f.11. The Contractor shall advise Engineer-in-charge/Site-in-charge in writing atleast 21 days before exhausting the Cement stocks already held by Contractor to ensure that such delays do not lead to interruptions in the progress of work.
- 7.f.12. Cement shall not be supplied by the Owner for manufacturing of mosaic tiles, precast cement jali and any other bought out items which consume cement and for temporary works.
- 7.f.13. Cement in bags and in good usable condition left over after the completion of work shall be returned by the contractor to the Owner. The Owner shall make payment to the Contractor at the supply rate for such stocks of cement they accept and receive. Any refused stock of cement shall be removed by the Contractor from the site at his cost and expenses within 15 days of completion of the work.

**8. PAYMENT OF CLAIMS AND DAMAGES**

- 8.1. Should the Owner have to pay money in respect of claims or demands as aforesaid the amount so paid and the costs incurred by the Owner shall be charged to and paid by the Contractor and the Contractor shall not be entitled to dispute or question the right of

the Owner to make such payments notwithstanding the same may have been without his consent or authority or in law or otherwise to the contrary.

- 8.2. In every case in which by virtue of the provisions of Workmen's Compensation Act, 1923, or other Acts, the Owner is obliged to pay Compensation to a Workman employed by the Contractor in execution of the works, the Owner will recover from the Contractor the amount of compensation so paid and without prejudice to the rights of Owner under the said Act. Owner shall be at liberty to recover such amount or any part thereof by deducting it from the security deposit or from any sum due to the Contractor whether under this contract or otherwise. The Owner shall not be bound to contest any claim made under Section 12 sub section (1) of the said Act, except on the written request of the Contractor and upon his giving to the Owner full security for all costs for which the owner might become liable in consequence of contesting such claim.

**8.a. ACTION AND COMPENSATION IN CASE OF BAD WORK**

If it shall appear to the Engineer-in-Charge/Site-in-Charge that any work has been executed with bad, imperfect or unskilled workmanship, or with materials, or that any materials or articles provided by the Contractor for execution of the work are not of standards specified/inferior quality to that contracted for, or otherwise not in accordance with the contract, the CONTRACTOR shall on demand in writing from the Engineer-in-Charge/Site-in-Charge or his authorised representative specifying the work, materials or articles complained of, notwithstanding that the same may have been inadvertently passed, certified and paid for, forthwith rectify or remove and reconstruct the work so specified and at his own charge and cost and expenses and in the event of failure to do so within a period of 15 days of such intimation/ information/knowledge, the Contractor shall be liable to pay compensation equivalent to the cost of reconstruction by the Owner. On expiry of 15 days period mentioned above, the Owner may by themselves or otherwise rectify or remove and re-execute the work or remove and replace with others, the materials or articles complained of as the case may be at the risk and expenses in all respects of the Contractor. The decision of the Engineer-in-Charge/ Site-in-Charge as to any question arising under this clause shall be final and conclusive and shall not be raised as a dispute or shall be arbitrable.

**8.b. INSPECTION AND AUDIT OF CONTRACT AND WORKS**

This project is subject to inspection by various Government agencies of Government of India. The contractor shall extend full cooperation to all the Government and other agencies in the inspection of the works, audit of the Contract and the documents of Contract Bills, measurements sheets etc. and examination of the records of works and make enquiries interrogation as they may deem fit, proper and necessary. Upon inspection etc. by such agencies if it is pointed out that the contract work has not been carried out according to the prescribed terms and conditions as laid down in the tender documents and if any recoveries are recommended, the same shall be recovered from the contractors running bills/final bill/from ordered/suggested Security Deposit/retention money. The Contractor shall not rise any dispute on any such account and the same shall not be arbitrable.

**9. CONTRACTOR TO INDEMNIFY THE OWNER**

The Contractor shall indemnify the Owner and every member, officer and employee of the Owner, also the Engineer-in-Charge/Site-in-Charge and his staff against all the actions, proceedings, claims, demands, costs, expenses, whatsoever arising out of or in connection with the works and all actions, proceedings, claims, demands, costs,

expenses which may be made against the Owner for or in respect of or arising out of any failure by the Contractor in the performance of his obligations under the contract. The Contractor shall be liable for or in respect of or in consequence of any accident or injury to any workmen or other person in the employment of the Contractor or his sub contractor and Contractor shall indemnify and keep indemnified the Owner against all such damages, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

#### **10. Price reduction**

- i) In case of any delay in completion of the work beyond the CDD, the Owner shall be entitled to be paid Price Reduction by the Contractor. The price reduction shall be initially at the rate of 0.5% (half percent) of the total contract value for every week of the delay subject to a maximum of 5% of the total contract value. The price reduction shall be recovered by the Owner out of the amounts payable to the Contractor or from any Bank Guarantees or Deposits furnished by the Contractor or the Retention Money retained from the Bills of the Contractor, either under this contract or any other contract.
- ii) The Contractor shall be entitled to give an acceptable unconditional Bank Guarantee in lieu of such a deduction if Contractor desires any decision on a request for time extension.
- iii) Once a final decision is taken on the request of the Contractor or otherwise, the price reduction shall be applicable only on the basic cost of the contract and on each full completed week(s) of delay (and for part of the week, a pro-rata price reduction amount shall be applicable).
- iv) This final calculation of price reduction shall be only on the value of the unexecuted portion/quantity of work as on the CDD.
- v) Contractor agrees with the Owner, that the above represents a genuine pre- estimate of the damages which the Owner will suffer on account of delay in the performance of the work by Contractor. The Contractor further agrees that the price reduction amount is over and above any right which owner has to risk purchase under Clause 12.4 and any right to get the defects in the work rectified at the cost of the contractor.

#### **11. DEFECTS AFTER TAKING OVER OR TERMINATION OF WORK CONTRACT BY OWNER**

- The Contractor shall remain responsible and liable to make good all losses or damages that may occur/appear to the work carried out under this Contract within a period of 12 months from date of issue of the Completion Certificate and/or the date of Owner taking over the work, whichever is earlier. The Contractor shall issue a Bank Guarantee
- ® to the Owner in the sum of 10% of the work entrusted in the Contract, from **a bank from the list of banks whose bank guarantees are acceptable to the Owner (list enclosed)** and if however, the Contractor fails to furnish such a Bank Guarantee the Owner shall have right to retain the Security Deposit and Retention Money to cover the 10% of the Guarantee amount under this clause and to return/refund the same after the expiry of the period of 12 months without any interest thereon. (Please refer to clause 4. Deposits)

- ® **REVISION : PROC-045**