

## **SPECIAL CONDITIONS OF CONTRACT (SCC COMMERCIAL)**

### **1.0 PRELIMINARY**

- 1.1 Special Conditions of Contract (SCC) shall be read in conjunction with the General Conditions of Contract Works (GTC-Works) also referred to as General Terms & Conditions of Works, Schedule of Rates, specifications of work, drawings and any other document forming part of this Contract wherever the context so requires.
- 1.2 Notwithstanding the sub-division of the document into these separate Chapter and volumes, every part of each shall be deemed to be supplementary of every other part and shall be read with and into the Contract so far as it may be practicable to do so.
- 1.3 Where any portion of the GTC-Works is repugnant to or at variance with any provisions of the Special Conditions of Contract, then unless a different intention appears, the provision(s) of the Special Conditions of Contract shall be deemed to override the provision(s) of GTC-Works only to the extent that such repugnancies or variations in the Special Conditions of Contract are not possible of being reconciled with the provisions of GTC-Works.
- 1.4 Wherever it is stated in this Bidding Document that such and such a supply is to be affected or such and such a work is to be carried out, it shall be understood that the same shall be affected and/or carried out by the CONTRACTOR at his own cost, unless a different intention is specifically and expressly stated herein or otherwise explicit from the context. Contract Price shall be deemed to have included such cost.
- 1.5 The materials, design & workmanship shall satisfy the applicable relevant International / Indian Standards, the job specifications contained herein & codes referred to. Where the job specifications stipulate requirements in addition to those contained in the standard codes and specifications, these additional requirements shall also be satisfied. In the absence of any Standard / Specifications / Codes of practice for detailed specifications covering any part of the work covered in this bidding document, the instructions / directions of HPCL will be binding upon the CONTRACTOR.
- 1.6 In case of contradiction between relevant International / Indian standards, GTC-Works, Special Conditions of Contract, Specifications, Drawings and Price Schedule / Schedule of Rates, the following shall prevail in order of precedence.
  - a. Detailed Order along with Statement of Agreed Variations, if any, and its enclosures.
  - b. Letter of Award (LOA)/Letter of Intent (LOI)
  - c. Price Schedule / Schedule of Rates with Quantities.
  - d. Scope of Work/Supply/ Job / Particular Specifications (Tender specific)
  - e. Drawings
  - f. Special Conditions of Contract (SCC)
  - g. Technical / Material Specifications
  - h. Agreed Terms and Conditions(A.T.C.)
  - i. Instructions to Bidders (ITB) /Notice Inviting tender (N.I.T.)
  - j. General Terms and conditions(Works) (GTC- Works)
  - k. Relevant Indian / International Standards/ Specifications.

The provisions given above shall prevail over the order of precedence given in clause 1.7

of General Terms & Conditions of Works Contract.

- 1.7** It will be CONTRACTOR's responsibility to bring to the notice of Engineer-In-Charge any irreconcilable conflict in the contract documents before starting the work (s) or making the supply with reference to, which the conflict exists.
- 1.8** In the absence of any Specifications covering any material, design or work(s) the same shall be performed/supplied/executed in accordance with standard engineering practice as per the instructions/directions of the Engineer-In-Charge, which will be binding on the CONTRACTOR.

## **2.0 DEFINITIONS**

- i. The terms 'Bidder', 'Contractor', 'Seller', 'Supplier' or 'Vendor' stated anywhere in the Bidding Document carry the same meaning.
  - ii. The terms 'Client', 'Owner', 'Purchaser' stated anywhere in the Bid Document refer to Hindustan Petroleum Corporation Limited (HPCL).
  - iii. The term 'Contract', 'Order' stated anywhere in the Bidding Document carry the same meaning.
  - iv. Any reference to the Govt. Acts / Regulations etc. in the Bidding Document is only indicative, and it is entirely for the Bidder to ascertain the applicable Acts/Regulations.
  - v. except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
  - vi. "day" means calendar day.
  - vii. The words "un-incorporated Joint Venture (JV)" and "Consortium" have the same meaning.
- 1.9** "GST" shall mean Goods and Services Tax charged on the supply of material(s) and services. The term "GST" shall be construed to include the Integrated Goods and Services Tax (hereinafter referred to as "IGST") or Central Goods and Services Tax (hereinafter referred to as "CGST") or State Goods and Services Tax (hereinafter referred to as "SGST") or Union Territory Goods and Services Tax (hereinafter referred to as "UTGST") depending upon the import / interstate or intrastate supplies, as the case may be. It shall also mean GST compensation Cess, if applicable.

### **viii. CONTRACT VALUE / CONTRACT PRICE**

- a. **SERVICES/JOB/WORKS CONTRACTS:** The contract value would mean the total cost inclusive of taxes, levies and all other costs at which the contract is awarded but exclusive of value of items in OWNER's scope of supply. This contract value shall also be used for calculation of price reduction and CPBG amount.
- b. **LUMPSUM/TURNKEY CONTRACTS:** The contract value would mean the total cost and all other costs inclusive of taxes, duties, levies, freight etc. This contract value shall also be used for calculation of price reduction and CPBG amount.

### **3.0 SCOPE OF WORK, SUPPLY OF MATERIALS**

The scope of work covered in this Contract will be as described in particular job specifications, Technical specifications, Standard Specifications, Schedule of Rates etc. The scope of supply covered in this Contract will be as described in Particular Job Specifications, Technical Specifications, Standard Specifications, Schedule of Rates etc. It is however, explicitly understood that scope described is not limiting, in so far as the responsibilities of the contractor are concerned and shall include, inter alia, carrying out any and all works and providing any and all facilities as are required to complete the works in all respect. The entire work as per Scope of Work covered under this contract shall be treated as "Indivisible Works Contract".

Materials to be supplied by the Owner on free issue basis, if any, under this Contract will be as described in Particular Job Specifications. Clause no. 7.f of GTC-Works stands modified to the extent of same.

The entire work as per Scope of Work covered under this contract shall be awarded on single point responsibility basis.

### **4.0 BID PRICES**

- 4.1 Price must be furnished in the Price Schedule format available online in e-tender portal of HPCL. Quoted prices must be net of discount, if any. Conditional discounts, if offered by a bidder, shall not be considered for evaluation.
- 4.2 Unless otherwise agreed to in the terms of the Purchase Order, the price shall be firm and not subject to escalation for any reason whatsoever till the execution of entire order, even though it might be necessary for the order execution to take longer than the delivery period specified in the order.
- 4.3 Price shall be exclusive of GST (CGST, SGST, IGST as applicable), Customs Duty and applicable cess, which are leviable by law on sale of finished goods to Corporation. The nature and extent of such levies shall be shown separately.
- 4.4 Quoted prices shall be inclusive of all testing and inspection requirements (including stage wise and final inspection by Owner for which no extra charges shall be paid) as specified in the bid document. However, Personal and incidental expenses of Owner's inspectors and Third-Party Inspection Agency (TPIA) is not in Bidder's scope. However, it shall be contractor's sole responsibility to co-ordinate with all the stakeholders including vendors and expedite the equipment / package delivery to meet the project schedule. The Contractor's qualified QC engineer shall be present for all the Inspection activities along with Owner at sub-vendors workshop / site.

On award of contract, the bidder / contractor shall submit the detailed Inspection Categorization plan for all the packages / equipment's in the tendered works for Owner's approval.

In case the material gets rejected / does not fulfill acceptance criteria as per technical requirements then it shall be sole responsibility of the contractor to carry out rectification or arrange for replacement of part or full equipment / package as required, without any time and cost implication to the Owner . Also in such an event, bidder shall be responsible for carrying out the re-inspections from TPIA at their own cost.

- 4.5 Bidder's quoted prices shall be firm & fixed till the completion of the works in all respects and no escalation in prices on any other account shall be admissible to the contractor. The quoted prices shall be deemed to include entire scope of work and all obligations and responsibilities to be carried out/ executed by the Bidder as per terms of bid document.
- 4.6 Bidder to note and consider the following:
- a) As per rule 138 of CGST rules, e-way bill is to be generated by a person who causes the movement of goods. Effective from 1st Feb.2018, for all the supplies on FOR/FOT basis.
  - b) In case as per state laws the issuance of Road Permit/Waybill is to be arranged by the buyer, HPCL will arrange to issue Road Permit/Waybill. In case of imposition of any Tax the same shall be discharged by the buyer and the same will be adjusted against the payments due to vendors against their bills.
- 4.6.1 Transportation Charges (as per Price Schedule) up to respective project site exclusive of Goods and Service Tax. **Transit Insurance to be arranged by vendor.** In case, bidder does not quote for transportation charges, the bidder shall be required to absorb the same in their quoted price. Non-compliance shall result in rejection of the bid.
- 4.6.2 Site work Prices, if applicable as per the scope of work mentioned in MR documents, shall be exclusive of Prevailing GST. All necessary taxes & duties and registration, if required, for carrying out the site activities shall be done by the bidder and cost towards the same shall be included in quoted site work prices.
- 4.6.3 GST Tax, payable extra on Site Work Services, as applicable.
- 4.6.4 The entire work covered under this contract shall be treated as "Works Contract".

## **5.0 TAXES, DUTIES AND LEVIES ON MATERIALS /SERVICES:**

### **5.1 For Indian Bidders**

- 5.1.1 GST (CGST, SGST, IGST as applicable), and applicable Cess shall be reimbursed for the materials consigned to Corporation as per limits indicated in the offer against documentary evidence to be furnished by the Supplier. Payment of taxes and evaluation of bids shall be done as per ITB clause no 34 (along with sub clause 34.16)

Taxes / Duties and/or Levies not indicated by supplier in Bid, but payable, shall be to Supplier's account. In case of any increase/decrease applicable in GST (CGST, SGST, IGST as applicable) and applicable Cess indicated with reference to limits mentioned in the offer / bid or new taxes / duties / levies imposed by the Indian Government through Gazette notification after the date of submission of last Price bid but prior to Contractual Delivery Date, the Corporation shall reimburse/adjust the increase/decrease in taxes & duties on satisfactory supporting documents.

- 5.1.2 Supplier shall be responsible for availing all applicable concessions in taxes, duties, levies etc. as per terms of Purchase Order. Any loss, direct or implied, accrued to Corporation on account of supplier's failure to avail concessions shall be borne by Supplier.
- 5.1.3 Bidder's quoted prices shall be inclusive of all taxes, duties, cess, levies etc., paid or payable on the raw material/components incorporated or to be incorporated in the offered finished goods, packing and forwarding charges, but excluding applicable taxes and duties on finished goods.
- 5.1.3.1 Bidder shall furnish the present rate(s) GST payable on quoted finished goods.
- 5.1.3.2 Owner shall make from Contractor's bills such tax deductions as are required as per rules and regulations in force in respect thereof from time to time.
- 5.1.3.3 The quoted price shall be inclusive of cess applicable as per Building & other Works Contract Act, 1996
- 5.1.4 It is for the Bidder to assess and ascertain the rate of above taxes & duties applicable on quoted items. It is clearly understood that Owner will not have any additional liability towards payment of above taxes & duties, which are based on Bidder's wrong assessment / interpretation of applicability of said taxes & duties. The bidder shall keep HPCL indemnified from any demand from statutory/ local bodies on this account and any liability including statutory liability arising in future shall be borne & paid by the bidder.

If any tax liability arises due to non-compliances of any laws by the supplier, the same will be deducted from the claims of the party and will be released only after the contractor does compliances.

## 5.2 **Custom Duty:**

- 5.2.1 The Contract Price shall include the following duties i.e Custom Duties, Social Welfare Surcharge, IGST for all materials and consumables envisaged to be imported for incorporation in the permanent works. It shall be clearly understood by the Contractor that custom duty shall neither be paid nor reimbursed by Employer. Contractor shall be fully responsible for port clearance including stevedoring, handling, unloading, loading, storage, inland transportation and receipt of materials at site etc. and cost thereof shall be included in the contract price. The contractor shall also be fully responsible for any delays, penalties, demurrages, shortages and other charges and losses, if any, in this regard.
- 5.2.2 The CIF value of materials envisaged to be imported for the purpose of permanent incorporation in the works shall be indicated separately in the Price Schedule. The custom duty and other import duties payable on the CIF value of materials imported for the purpose of permanent incorporation in the work shall be paid directly by the contractor and are included in the contact price. However, the Employer shall pay statutory variation in custom duty (except cenvatable component), if any, after the date of submission of last price bid & up to Contractual completion period but beyond the contractual completion period the statutory variation shall be to contractor's account.

All the necessary approvals for availing the preferential rates of customs as per the

Customs Manual should be adhered by the contractor and tax benefits arising should be passed on to HPCL.

### **5.3 Income Tax / Corporate Tax:**

- 5.3.1 Income Tax deductions shall be made from all payments made to the Contractor as per the rules and regulations in force in accordance with the Income Tax Act prevailing from time to time. Any subsequent change of Income Tax Laws in India in future shall also be effected if applicable during the currency of the Contract.
- 5.3.2 Corporate Tax Liability if any shall be to Contractor's account.
- 5.3.3 GST as may be applicable shall be deducted as per the trade tax act.
- 5.3.4 As regards Income Tax, Surcharge on Income Tax or any other Corporate Tax payable by the Bidder for reason of the contract awarded, and / or on their expatriate personal, the Owner shall not bear any Tax liability whatsoever, irrespective of the mode of construction of contract / order. The Bidder shall be liable and responsible for payment of such tax, if attracted under the provision of Indian Income Tax Act.
- 5.3.5 Bidder may note that if any tax is deductible at source as per Indian Income Tax Law, the same will be so deducted before releasing any payment to the Bidder and a TDS (Tax deducted at source) certificate will be furnished to the Bidder. Accordingly, Bidder shall have the responsibility to check and include such provision of taxes in the prices.
- 5.3.6 In case of delay in delivery due to reasons attributable to Bidder, any new or additional taxes or duties levied by Statutory authorities during this period shall be borne by the Bidder.
- 5.3.7 The contractor shall provide accurate particulars of PAN number as required, under Section 206AA of Income Tax Act 1961. In case of non-residents not having Permanent Account Number (PAN) the provisions of section 206AA shall not apply if the non-resident furnishes the following information/ documents:
  - a. Name, e-mail id, contact number;
  - b. Address in the country of which the deductee is a resident
  - c. Tax Residency Certificate (TRC) from the Government of that country
  - d. Tax identification number / unique number of the deductee in the country of his residence.
- 5.3.8 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 Owner 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.

### **5.4 Statutory Variations in taxes, duties & levies:**

Following has been added to Clause 7.d of GTC works:

- 5.4.1 Change in Tax Law (as defined below), which results in increased cost of supply and services under the Contract through increased liability of Taxes, the seller shall be covered for any such increased cost by the Owner subject to the production of documentary proof to the satisfaction of the Owner to the extent which is attributable to such change or amendment as mentioned above within the Contractual Delivery Date. However, in case of delay in delivery beyond the contractual delivery date, for reasons attributable to seller, any increase in taxes shall be borne by seller. Any decrease in Taxes shall be passed on to the Owner.
- 5.4.2 Further variation in taxes and duties (both nature and quantum) shall be applicable only on the taxes and duties indicated in the Price Bid. The statutory increase in taxes (in case where quoted taxes are less than the taxes/ duties payable as per the statute) shall be payable only to the extent of taxes quoted by the vendor plus statutory increase in the taxes.
- 5.4.3 The statutory variation in Customs duty, based on CIF value of import content indicated in bid, within the contractual delivery period after bid due date and till Contractual delivery period shall be to Owner's account against submission of the documentary evidence. However, any increase in the rate of Customs duty beyond the contractual completion period shall be to bidder's account. In case of wrong classification, no variation including statutory variation of Customs Duty will be payable extra. Any decrease in the rate of Customs duty shall be passed on to the Owner.
- 5.4.4 Since Goods and Services Tax ("GST") is implemented, Bidders to provide GSTIN number, HSN/SAC Code of the Material/Services being supplied and the applicable GST rates.
- 5.4.5 The Bidder accepts full and exclusive liability for the payment of any and all applicable taxes (CGST, SGST, IGST, UTGST), levies and statutory payments payable under all or any of the prevailing Central/State statutes.
- 5.4.6 The Bidder 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.) of Bidder. Bidder 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.

- 5.4.7 Every invoice of the vendor shall contain all the details as per the prevalent statute of the land like GST ACT etc.

- 5.4.8 The Vendor shall mention their registration status (Registered / Composition / Unregistered) on the bill/invoice. In case there is change in the Registration status of the vendor during the execution of the contract the same should be advised immediately. Due to change in the Registration status from Composition to Registered vendor etc. Corporation will not be liable for any additional tax payments.
- 5.4.9 Corporation will be liable to pay only those taxes and levies as indicated by Bidder at the time of unpriced bid submission/as considered for evaluation and payment as per ITB clause 34.16.
- 5.4.10 Any tax, levies or any other form of statutory levies or cost as on closing date of the tender will be treated as included in Priced bid. Taxes, Duties, and Levies not indicated by Bidder in the unpriced Bid, but payable, shall be to Bidder's account.
- 5.4.11 New taxes / change in tax rates / levies imposed by the Indian/State Governments through Gazette notification after the date of submission of last Price Bid but prior to Contractual Delivery Date, the Corporation shall reimburse/ adjust the increase/ decrease in taxes on satisfactory supporting documents being provided by the Bidder.
- 5.4.12 In case goods are not supplied/services not provided within the scheduled delivery period, then the increase in the statutory levies, if any, shall be on vendor's account.
- 5.4.13 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. Bidders to take note of the same and pass such benefits while quoting their price.
- 5.4.14 GSTIN Number
- States where the supplies/services are required are given in the price schedule. GSTIN details of HPCL for these states can be taken from our website [www.hindustanpetroleum.com](http://www.hindustanpetroleum.com).
- Bidder is required to provide the GSTIN number of state from where supplies will be made to each of the HPCL delivery locations.
- In case any changes are warranted during the execution of the contract with regard to change in state where delivery is required or change in the supply location of Bidder, the same will be made with mutual consent.
- 5.4.15 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.
- 5.4.16 The Supplier shall provide accurate particulars of PAN number as required, to enable issuance of TDS (Tax Deduction at Source) certificate.

## **6.0 EXECUTION OF WORK**

### **6.1. CONTRACT DOCUMENT**

- 6.1.1 The Contract Document shall consist of the following:
- i) Original Bidding Document along with its enclosures issued.
  - ii) Amendment/Corrigendum to original Bidding Document issued, if any.
  - iii) Letter of Intent/ Acceptance/Award.
  - iv) Detailed letter of Award/Acceptance along with enclosures attached therewith.
  - v) Purchase Order placed by the Owner

## 6.2. **TIME SCHEDULE**

The work shall be executed strictly as per time Schedule mentioned in **special terms and conditions in the tender document**. The period of completion given includes the time required for mobilization as well as testing, rectifications, if any, retesting and completion in all respects to the entire satisfaction of the Engineer-in-Charge.

## 6.3. **INSURANCES**

- 6.3.1 OWNER will obtain appropriate Marine Cum Erection Insurance Policy towards Owner's Interest in the Project. CONTRACTOR shall obtain and maintain any and all other Statutory Insurance(s) required under Indian laws and regulations, including as listed clause no. 6.e.1 & 6.e.2 of GTC-Works.
- 6.3.2 Contractor shall be liable to undertake insurance as applicable for his works under the Contract, equipment, labour and vehicles engaged in performance of the work at CONTRACTOR's own cost. The CONTRACTOR is required to maintain such insurance policies in the joint name of OWNER and CONTRACTOR. However, wherever the CONTRACTOR has already has the insurance policies for their worker / equipment / Vehicle etc. proposed to be used at project site, the CONTRACTOR shall have the option either to get the new Insurance policy in the joint name of OWNER and CONTRACTOR or get the endorsement of existing policies from Insurers in the joint name of OWNER and CONTRACTOR. The responsibility to maintain adequate insurance coverage in this regard at all times during the period of Contract shall be that of CONTRACTOR alone. CONTRACTOR's failure in this regard shall not relieve him of any of his responsibilities and obligations under the contract.
- 6.3.3 CONTRACTOR shall provide the OWNER with a copy of all insurance policies and documents taken out by him in pursuance of the Contract. Such copies of documents shall be submitted to the OWNER immediately upon the CONTRACTOR having taken such insurance coverage and ensure revalidation/renewal etc., as may be necessary well in time. Also contractor shall notify owner 60 days in advance reason of expiry/cancellation /changes in any of the above documents.
- 6.3.4 Any loss or damage to the materials provided by owner to the contractor during handling, storage, erection, final test and commissioning, shall be to the account of CONTRACTOR, and the CONTRACTOR shall be exclusively responsible within the scope of supplies /services/ works to make good any damage or loss to the materials and works by way of repairs and/or replacement, as the case may be, pending insurance claim and no delay shall be made by the CONTRACTOR in repair/ replacement pending such claim.
- 6.3.5 In such case, the CONTRACTOR if authorized by OWNER shall raise the insurance claim

in case of damage to the materials and/ or works and all supporting documents for such claims shall be handed over by the CONTRACTOR to the OWNER immediately. CONTRACTOR shall provide all assistance for such a claim. The CONTRACTOR shall bear the entire cost of arranging all documents/ information, facilitating inspection/ discussions by the officials/ surveyors deputed by the Insurer. The CONTRACTOR shall make all efforts to get settlement of claim at the earliest. In case insurance claim is raised by owner, CONTRACTOR shall provide all assistance for such claim including, but not limited to arranging all documents/ information, facilitating inspection/ discussions by the officials/ surveyors deputed by the Insurer.

6.3.6 CONTRACTOR shall be paid against any claim / loss suffered by him and which forms part of the insurance claim raised, based on amount recovered after settlement of claim / loss by insurer against insurance claim / loss falling under OWNER's policy after adjusting deductible, for loss caused to the contractor and falling in owner's policy scope as applicable.

6.3.7 CONTRACTOR shall be liable solely to adhere to the requirements of the insurer for settlement of claims without prejudice to the rights of OWNER / Insurer. During claim, the contractor is required to take all necessary steps including but not limited to the following steps:

- Timely information for conducting survey.
- Protecting the rights of Owner while issuing acknowledgements.
- Lodging of monetary claims in time and furnishing of requisite documents to surveyors/ Insurer.
- Taking necessary precautions so that the loss/ damage is not aggravated further. Damaged goods to be protected fully.

Any money received by the OWNER under any policy or policies of insurance shall be held by the OWNER for proportionate payment to the CONTRACTOR in respect of any appropriate repairs undertaken and/ or replacement(s) made by the CONTRACTOR. Should the CONTRACTOR fail to undertake in whole or part such repairs and/or replacement(s) and other works necessary consequent upon the occurrence of any contingency covered by such insurance, OWNER shall be entitled to get the work done in whole or parts for such repair/ replacement through any other agency, without prejudice to any other rights or remedies available to the OWNER, at the sole risk & cost of the CONTRACTOR.

#### **6.4. DIGITAL PAYMENTS**

In order to encourage and facilitate card / digital payments, in line with Office Memorandum of Ministry of Finance, Govt of India (F. No.-01/02/2015-Cy.II-Vol-V dtd 29<sup>th</sup> Feb, 2016) Vendor / contractor has to ensure all payments to Workmen, Subcontractors and Suppliers of Materials & Services are made in the form of e-Payment only, as per due dates, where ever applicable.

The Contractor has to ensure payment of wages through e payment only within stipulated time i.e. on or before 7<sup>th</sup> of following month of the wage period.

#### **7.0 PAYMENTS OF CONTRACTOR'S BILL**

## 7.1. **TERMS OF PAYMENT**

Payments shall be made to the CONTRACTOR as per the “Terms of Payment” as defined in **special terms and conditions in the tender document**.

7.2. “In the partial modification of clause 7. of GTC works, following shall be applicable

7.2.1. Progress payment shall be made to the Contractor against running bills as per Order while withholding retention money (Where PBG has not been provided) as per the General Terms & Conditions of Work Contract.

### **Note:**

(i) All payments except final bill can be released in 2 (two) stages as follows :

75% of bill amount duly recommended by HPCL shall be paid in 7 days of receipt of certified bill at HPCL disbursement section. Balance 25% to be paid after verification / certification within 15 days of receipt of certified bill at HPCL disbursement section.

Final bill shall be paid within 30 days of receipt of certified bill at HPCL disbursement section, complete in all respects as per tender.

(ii) Wherever possible payment shall be tendered to Contractor in electronic mode (e payment) through any of the designated banks. The Contractor will comply by furnishing the particulars of Bank account (mandate — as per Proforma attached in tender document) to which payment will be routed. Owner reserves the right to make payment in any alternate mode also. The Contractor shall provide accurate particulars of PAN number as required to enable issuance of TDS certificate.

(iii) No Interest charges for delay in payments, if any, shall be payable by the Owner.

(iv) Security Deposit / Performance Bank Guarantee shall be provided as per the provisions contained in General Terms and Conditions of Contract.

(v) Bidders to note that Advance Payment is not permissible in the contract.

7.3 Contractor shall prepare the Bills/ Invoices State & Station wise.

7.4 Documents to be submitted along with Running Account (RA) Bill.

### **A. Bill Specific**

i. Invoice in quadruplicate. Every invoice of the vendor shall contain invoice number, date, GSTIN number and HSN/SAC code (Harmonized system of Nomenclature/service accounting code) for the items being supplied or services being provided along with tax rate. GST shall be paid against receipt of Tax invoice and proof of payment of GST to Government. In case of non-receipt of tax invoice or non-payment of GST by the Contractor, HPCL shall withhold the payment of GST.

The Vendor shall mention their registration status (Registered / Composition / Unregistered) on the bill/invoice.

ii. Measurement sheet duly signed by contractor and certified by HPCL.

iii. Abstract of measurement sheet and work done till previous bill, the running and

- iv. cumulative quantity certified by HPCL.
- v. Documentary evidence towards payment of ESI, EPF etc. as per statute.
- vi. Wage sheets for the labour engaged.
- vii. Undertaking that Contractor has complied with all statutory requirements including updating of QA/QC, CTE and other Registers as required under the Order during the period for which the progress payment has been claimed.
- viii. MTC, IRN for supply items.
- ix. Details / statement of Payments made to all approved sub-vendors along with relevant acquaintances pertaining to the payments

#### B. General

- i. Copy of valid Contractor's "All Risk Policy"(if applicable)
- ii. Copy of Indemnity Bond for Free Issue Material (if FIM applicable)
- iii. Copy of valid Employee Insurance Policy.
- iv. Copy of valid Workman Compensation Insurance Policy.
- v. Power of Attorney in the name of person signing the bill & person signing the Indemnity bond.
- vi. Any other document as required by HPCL.

#### 7.4.1 Documents to be submitted along with Final Bill.

- i) Invoice in quadruplicate. Invoice of the vendor shall contain invoice number, date, GSTIN number and HSN/SAC code (Harmonized system of Nomenclature/service accounting code) for the items being supplied or services being provided along with tax rate. GST shall be paid against receipt of Tax invoice and proof of payment of GST to Government. In case of non-receipt of tax invoice or non-payment of GST by the Contractor, HPCL shall withhold the payment of GST.  
The Vendor shall mention their registration status (Registered / Composition / Unregistered) on the bill/invoice.
- ii) Measurement Sheet duly signed by contractor and certified by HPCL
- iii) Abstract of measurement sheet with cumulative quantity certified by HPCL.
- iv) No-Claim Certificate declaring that there are no balances or pending Claims from HPCL towards the subject Order.
- v) No-Due declaration indicating that there are no balance dues to his sub-vendor / subcontractors along with the Final Bill.
- vi) Copies of statutory documents as required by HPCL.
- vii) Reconciliation statement of HPCL supplied material
- viii) Site clearance including dismantling of temporary store/office as instructed by HPCL.
- ix) All required technical documents stated elsewhere in the tender document.

#### 7.5 VOID

### 8 **CONFIDENTIALITY**

Neither OWNER nor CONTRACTOR nor their personnel, agents nor any sub-CONTRACTOR shall divulge to any one (other than persons designated by the party disclosing the information) any information designated in writing as confidential and obtained from the disclosing party during the course of execution of the works so long as and to the extent that the information has not become part of the public domain. This obligation does not apply to information furnished or made known to the recipient of the information without restriction as to its use by third parties or which was in recipient's

possession at the time of disclosure by the disclosing party. Upon completion of the works or in the event of termination pursuant to the provisions of the contract, CONTRACTOR shall immediately return to OWNER all drawings, plans, specifications and other documents supplied to the CONTRACTOR by or on behalf of OWNER or prepared by the CONTRACTOR solely for the purpose of the performance of the works, including all copies made thereof by the CONTRACTOR.

## **9 PATENTS, INFRINGEMENT & INDEMNITY:**

- 9.1 Seller shall protect and fully indemnify Purchaser from any claims for infringement of patents, copyright, trade mark or the like.
- 9.2 Seller shall also protect and fully indemnify Purchaser from any claims from Seller's workmen/employees, their heirs, dependents, representatives etc. Or from any other persons/persons or bodies/companies etc. for any act of commission or omission while executing this Order.
- 9.3 Seller shall be responsible for compliance with requirements under the laws and shall protect and indemnify completely Purchaser from any claims/penalties arising out of any infringements.

## **10 CHANGE ORDERS:**

- 10.1 A change order will be initiated in case:
- i. The Owner directs the Contractor to include any addition to the scope of work not covered under this contract or deletes any part of the scope of the work under the contract.
  - ii. Contractor requests to delete any part of the work which will not adversely affect the operational capabilities of the project and if agreed by the Owner and for which cost and time benefits shall be passed on to the Owner.
- 10.2 Any changes required by the Owner before giving their approval to detailed procedure or any other document relating to material procurement, layout plans etc for complying with the requirements of bidding document shall not be construed to be a change in the scope of work under the contract.
- 10.3 Any change order as above comprising an alteration which involves a change in the cost of the works (which sort of alteration is hereinafter called a "Variation") shall be the subject of an amendment to the contract by way of an increase or decrease in the contract price and adjustment of the Construction Schedule if any.
- 10.4 If the contract provides applicable rates for the valuation of the variation in question the contract price shall be increased or decreased in accordance with those rates. If the parties agree that the contract does not contain applicable rates then the parties shall negotiate a revision of the contract price which shall represent the change in cost of the works caused by the variations. Any change order must be duly approved by the Owner in writing.
- 10.5 If there is a difference of opinion between Contractor and Owner whether a particular work constitutes a change order or not, the matter shall be handled in accordance with the

procedures set forth in Para 18.7 below.

- 10.6 Within 10(Ten) working days of receiving the comments from the Owner on the documents submitted by the Contractor for approval, the Contractor's response in writing stating which item(s) is/are potential change (s), if applicable, will be submitted to the Owner.

### **Procedure**

- 10.7 During execution of work if the Contractor observes that any new requirements which is not specific or intended in the bidding document has been indicated by Owner, they shall discuss the matter with Owner's representatives.
- 10.8 In case such requirement arises from the side of the Contractor they would also discuss the matter with Owner's Representative.
- 10.9 In either of the two cases above, the representatives of both the parties shall discuss the project requirement and mutually decide whether the project requirement constitutes a change order.
- 10.10 If it is mutually agreed that the project requirement/Inquiry constitutes a "Change Order" then a joint memorandum will be prepared to confirm a "Change Order" and basic ideas of necessary agreed modifications.
- 10.11 Contractor will study the work required in accordance with the Joint memorandum and assess subsequent schedule and cost effect if any.
- 10.12 The results of this study would be discussed mutually to enable Owner to give a final decision whether Contractor should proceed with the Change Order or not, in the best interest of the Project.
- 10.13 If Owner's representative accepts the change order in writing then Contractor shall proceed with the work stipulated in the Change order. Time worked by all workmen employed and a statement showing the description and quantity of all materials and plant utilised for extra work shall be submitted to Owner. The Owner's representative shall sign and return to the Contractor the statement, as agreed. At the end of each month the Contractor shall deliver to the Owner's representative a priced statement of the labour, materials and plant used. Whenever any dispute arises as to cost allocation between the Contractor and the Owner, the voucher shall nevertheless be signed by the Owner as a record of time worked and materials used. List and vouchers so signed will be the subject of negotiations between the Owner and the Contractor regarding their costs allocation.
- 10.14 In case, mutual agreement as above that is whether Project Requirement constitutes a Change order or not, is not reached, then Contractor, in the interest of the project, shall take up the implementation of the work, if advised in writing to do so by Owner's representative pending settlement between the two parties to the effect whether the Project Requirement constitutes a change order or not as per the terms and conditions of Contract Documents.
- 10.15 The time and cost effect in such a case shall be mutually verified for the purpose of record. Should it be established that the said work constitutes a Change Order, the same shall be compensated taking into account the records kept and in accordance with the contract.

- 10.16 Should the amount of extra work/ change order, if any, which the Contractor may be required to perform under instructions from the Owner, fairly entitle the Contractor to extensions of time beyond the scheduled completion date for completion of either the whole of the works or for such extra work only, the Owner and the Contractor shall mutually discuss and decide the extension of time, if any to be granted to the Contractor.

**11 GOVERNMENT OF INDIA NOT LIABLE**

It is expressly understood and agreed by and between the CONTRACTOR and the OWNER that the OWNER is entering into this agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this agreement and has no liabilities, obligations or rights there under. It is expressly understood and agreed that the OWNER is an independent legal entity with power and authority to enter into contract, solely in its own behalf under the applicable laws of India and general principal of Contract Law. The CONTRACTOR expressly agrees, acknowledges and understands that the OWNER is not an agent, representative or delegate of Govt. of India. It is further understood and agreed that the Govt. of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the contract. Accordingly, CONTRACTOR hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Govt. of India arising out of this contract and covenants not to sue to Govt. of India as to any manner, claim, cause of action or thing whatsoever arising of or under this agreement.

**12 JURISDICTION**

The CONTRACT shall be governed by and constructed according to the laws in force in India. The CONTRACTOR hereby submits to the jurisdiction of the Courts situated at Mumbai for the purposes of disputes, actions and proceedings arising out of the CONTRACT, the courts at Mumbai only will have the jurisdiction to hear and decide such disputed, actions and proceedings.

**13 ARBITRATION**

Clause 14 of GTC works stands replaced by the following:

- a) All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the parties hereto touching or concerning the contract, meaning, operation or effect thereof or to the rights and liabilities of the parties or arising out of or in relation thereto whether during or after completion of the contract or whether before after determination, foreclosure, termination or breach of the contract (other than those in respect of which the decision of any person is, by the contract, expressed to be final and binding) shall, after written notice by either party to the contract to the other of them and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the Sole Arbitrator to be appointed as hereinafter provided.
- b) The appointing authority shall nominate an officer/ retired officer of Hindustan Petroleum Corporation Limited (referred to as owner or HPCL) or a retired officer of any other

Government Company in the Oil Sector of the rank of Chief Manager & above or any retired officer of the Central Government not below the rank of a Director to the Govt. of India, to act as the Sole Arbitrator to adjudicate the disputes and differences between the parties. The contractor/vendor shall not be entitled to raise any objection to the appointment of such person as the Sole Arbitrator on the ground that the said person is/was an officer (employee) and/or shareholder of the owner, another Govt. Company or the Central Government or that he/she has to deal or had dealt with the matter to which the contract relates.

- c) In the event of the Arbitrator to whom the matter is referred to, does not accept the appointment, or is unable or unwilling to act or resigns or vacates his office for any reasons whatsoever, the Appointing Authority, shall nominate another person as aforesaid, to act as the Sole Arbitrator.
- d) Such another person nominated as the Sole Arbitrator shall be entitled to proceed with the arbitration from the stage at which it was left by his predecessor.
- e) It is expressly agreed between the parties that no person other than the Appointing Authority or a person nominated by the Appointing Authority as aforesaid, shall act as an Arbitrator. The failure on the part of the Appointing Authority to make an appointment on time shall only give rise to a right to a Contractor to get such an appointment made and not to have any other person appointed as the Sole Arbitrator.
- f) The Award of the Sole Arbitrator shall be final and binding on the parties to the contract. The work under the Contract shall however, unless suspended by the Owner, continue during the Arbitration proceedings and no payment due or payable to the concerned party shall be withheld (except to the extent disputed) on account of initiation, commencement or pendency of such proceedings.'
- g) The Arbitrator may give a composite or separate Award(s) in respect of each dispute or difference referred to him and may also make interim award(s) if necessary.
- h) The fees of the Arbitrator and expenses of arbitration, if any, shall be borne equally by the parties unless the Sole Arbitrator otherwise directs in his award with reasons. The lumpsum fees of the Arbitrator shall be Rs 70,000/- per case for transportation contracts and Rs 1,00,000/- for engineering contracts. Reasonable actual expenses for stenographer, etc. will be reimbursed. Fees shall be paid stage wise i.e. 25% on acceptance, 25% on completion of pleadings/documentation, and balance 50% on completion of arguments and receipt of award by the parties.
- i) Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder, shall apply to the Arbitration proceedings under this Clause.
- j) The Contract shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts situated at Mumbai for all purposes. The Arbitration shall be held at a place convenient to both parties and failing an agreement, the Arbitrator shall decide the venue. The Arbitration shall be conducted in English language.
- k) The Appointing Authority is the Director-Marketing of Hindustan Petroleum Corporation

Limited.

### **ARBITRATION: PUBLIC SECTOR VS GOVERNMENT DEPT. VICE VERSA**

In case of contracts/agreement to be executed between Public Sector Enterprises / Government Departments, following clause is applicable:

"In the event of any dispute or difference between the parties hereto, such dispute or difference shall be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government. If such resolution is not possible, then, the unresolved dispute or difference shall be referred to arbitration of an arbitrator to be nominated by Secretary, Department of Legal Affairs ("Law Secretary"). The Arbitration & Conciliation Act, 1996 shall not be applicable to the Arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, that any party aggrieved by such award may appeal for setting aside or revision of the award to Law Secretary whose decision shall bind the parties finally and conclusively. The said appeal should be filed within the period specified in the award of the arbitrator."

It is essential that, to avoid delay in nomination of arbitrator or initiation of arbitration proceeding, the Arbitration Clause or Agreement, as the case may be, is forwarded without fail at the time of making request for reference to the Law Secretary or Department of Legal Affairs.

### **Arbitration clause for other CPSE's, Central Government/Departments and State Governments/ Departments/ Organizations except agreements with Railways, Income Tax, Customs and Excise Departments shall be as follows:**

In the event of any dispute or difference relating to the interpretation and application of the provisions of this contract between the Parties, all such disputes or differences shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No.: 4(1)2013-DPE(GM)/FTS-1835 dated 22/05/2018 and any clarifications/amendments/ revisions made by the DPE in this regard.

### **14 ISSUE OF OWNER SUPPLIED MATERIAL**

- 14.1 The conditions for issue of material shall apply for materials explicitly mentioned under owner scope of supply only and reconciliation shall be as per provisions of document wherever applicable.
- 14.2 The reconciliation of material shall be applicable only for the material issued by Owner as free issue to Contractor and monthly reconciliation statement will be submitted along with monthly RA bill.
- 14.3 Indemnity bond will be submitted for the value of free issue of material valid till completion of Work.

### **15 MOBILIZATION ADVANCE (not applicable) :**

- 15.1 Contractor, if requested, shall be paid recoverable interest bearing Mobilization Advance up to a maximum of 10% (Ten Percent) of Total Value of Work Part Only. The mobilization advance will attract an interest rate as SBI's PLR rate (prevailing at the time of payment)

Plus 1% to be compounded quarterly.

Mobilization Advance shall be paid to the Contractor in two installments after signing the contract agreement and submission of performance bank guarantee for 110% of total mobilization advance amount, in the following manner:

#### 15.1.1 FIRST INSTALLMENT

- i. 5% (Five percent) of total Contract Value shall be payable as the first installment of mobilization advance after fulfilling the following formalities by the Contractor:
  - a. Duly accepted & signed copy of purchase order by the Contractor.
  - b. Submission of a separate bank guarantee towards Contract Performance from any Scheduled Bank in India other than Co-operative Bank in the proforma approved by Employer towards due performance of contract equivalent to 10% of awarded contract value which shall be kept valid till up to 3 Months after expiry of defect liability period.
  - c. Submission of a separate Bank Guarantee towards advance payment by any Scheduled Bank in India other than Co-operative Bank in the proforma approved by Employer equivalent to 110% of mobilization advance which shall be kept valid till scheduled completion of the work.
  - d. The Bank Guarantee submitted against mobilization advance shall be released after recovery of full mobilization advance along with interest thereon.

#### 15.1.2 SECOND INSTALLMENT

- i. Balance 5% Mobilization Advance shall be payable to the Contractor after Contractor has constructed site Office, storage shed, fabrication yard etc. and has physically mobilized equipments as specified in tender document and is ready to start the work to the entire satisfaction of Engineer -in-Charge and commencement of work at site. This installment shall be paid to the contractor after completion of initial mobilization. **The contractor shall also submit Utilization Certificate of advance received by him earlier.**

#### 15.2 RECOVERY OF MOBILISATION ADVANCE

- 15.2.1 The Mobilization Advance together with the interest accrued, shall be recovered from each running account bill @ 12.5% of gross amount of Monthly R.A. Bill in such a manner that the total advance and interest accrued is recovered when approximate 80% of the contract value gets paid. Balance amount, if any, shall be paid by the contractor through Demand Draft when approximate 80% of the contract value gets paid otherwise it will be recovered from any Bank Guarantee available with HPCL. However, in case of foreclosure or termination, full balance amount including interest as accrued shall be paid by the contractor through Demand Draft within 30 days of issue of such letter failing which same shall be recovered from any Bank Guarantee available with HPCL.

### 16 FRAUDULENT PRACTICES

- 16.1 The OWNER requires that Bidders/Vendors/CONTRACTORS observe the highest standard of ethics during the award/execution of Contract. "Fraudulent Practice" means a misrepresentation of facts in order to influence the award of a Contract to the detriment of the OWNER, and includes collusive practice among bidders ( prior to or after bid submission ) designed to establish bid prices at artificial non-competitive levels and to deprive the OWNER