APPENDIX – II

GUIDELINES & CONDITIONS FOR JOINT VENTURE FIRM

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Appendix-II

Guidelinesand conditionsof JOINT VENTURE

JOINT VENTURE: (Will be permitted in the tender value more than Rs.10.00 Crs.)

Instruction for tenderers-

i) The tenderer has to go through the 'Guidelines and conditions of JOINT VENTURE as stated below.

ii) A Format for "Memorandum of Understanding (MOU) is given as Annexure-K

iii) A Format for "Joint Venture/Consortium Agreement" is given as Annexure-L

iv) JV /MOU should be drawn on Non Judicial Stamp of suitable value.

v) All the necessary documents and certifications as mentioned in the 'Guidelines and conditions of JOINT VENTURE' should be attached with JV/MOU along with tender.

Guidelines and conditions of JOINT VENTURE

Following special conditions will be applicable in case of joint venture.

1. Participation of Joint Venture (JV) in Works Tender: This para shall be applicable for works tenders wherein tender documents provide for the same.

1.1. Separate identity/name shall be given to the Joint Venture.

1.2. Number of members in a JV shall not be more than three, if the work involves only one department (say Civil or S&T or Electrical or Mechanical) and shall not be more than five, if the work involves more than one Department. One of the members of the JV shall be its Lead Member who shall have a majority (at least 51%) share of interest in the JV. The other members shall have a share of not less than 20% each in case of JV with upto three members and not less than 10% each in case of JV with more than three members. In case of JV with foreign member(s), the Lead Member has to be an Indian firm/company with a minimum share of 51%.

1.3. A member of JV shall not be permitted to participate either in individual capacity or as a member of another JV in the same tender.

1.4. The tender form shall be purchased and submitted only in the name of the JV and not in the name of any constituent member. The tender form can however be submitted by JV or any of its constituent member or any person authorized by JV through Power of Attorney to submit tender.

1.4.1. Bid Security shall be submitted by JV or authorized person of JV either as :

(i) Cash through e-payment gateway or as mentioned in tender document, or

(ii) Bank Guarantee bond either in the name of JV, or in the name of all members of JV as per MOU irrespective of their share in the JV if the JV has not been constituted legally till the date of submission of tender.

(iii) Bid-Security of the successful bidder will be returned after submission of Security-Deposit, as per clause -16 (GCC-2022 part-II) and clause-5(GCC-2022 part-I).

(iv) The Bid Security of unsuccessful tenderers shall be returned to them after finalization of tender as per clause-5(GCC-2022 part-I).

1.5. A copy of Memorandum of Understanding (MoU) duly executed by the JV members on a stamp paper, shall be submitted by the JV alongwith the tender. The complete details of the members of the JV, their share and responsibility in the JV etc. particularly with reference to financial, technical and other obligations shall be furnished in the MoU.

1.6. Once the tender is submitted, the MoU shall not normally be modified / altered / terminated during the validity of the tender. In case the tenderer fails to observe/comply with this stipulation, tender shall liable to be rejected/terminated and the full Bid Security shall be liable to be forfeited.

1.7. Approval for change of constitution of JV shall be at the sole discretion of the Railway. The constitution of the JV shall not normally be allowed to be modified after submission of the bid by the JV, except when modification becomes inevitable due to succession laws etc., provided further that there is no change in qualification of minimum eligibility criteria by JV after change of composition . However, the Lead Member shall continue to be the Lead Member of the JV. Failure to observe this requirement would render the offer invalid.

1.8. Similarly, after the contract is awarded, the constitution of JV shall not be normally allowed to be altered during the currency of contract except when modification become inevitable due to succession laws etc. and minimum eligibility criteria should not get vitiated. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract conditions.

1.9. On award of contract to a JV, a single Performance Guarantee shall be submitted by the JV as per tender conditions. All the Guarantees like Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance etc. shall be accepted only in the name of the JV and no splitting of guarantees amongst the members of the JV shall be permitted.

1.10. On issue of LOA (Letter of Acceptance), the JV entity to whom the work has been awarded, with the same shareholding pattern as was declared in the MOU/JV Agreement submitted along with the tender, shall be got registered before the Registrar of the Companies under 'The Companies Act -2013' (in case JV entity is to be registered as Company) or before the Registrar/Sub-Registrar under the 'The Indian Partnership Act, 1932' (in case JV entity is to be registered as Partnership Firm) or under 'The LLP Act 2008' (in case JV entity is to be registered as LLP). A separate PAN shall be obtained for this entity. The documents pertaining to this entity including its PAN shall be furnished to the Railways before signing the contract agreement for the work. In case the tenderer fails to observe/comply with this stipulation within 60 days of issue of LOA, contract is liable to be terminated. In case contract is terminated railway shall be entitled to forfeit the full amount of the Bid Security and other dues payable to the Contractor under this contract. The entity so registered, in the registered documents, shall have, inter-alia, foll owing Clauses:

1.10.1. Joint And Several Liability - Members of the entity to which the contract is awarded, shall be jointly and severally liable to the Railway for execution of the project in accordance with General and Special Conditions of Contract. The members of the entity shall also be liable jointly and severally for the loss, damages caused to the Railways during the course of execution of the contract or due to non-execution of the contract or part thereof.

1.10.2. Duration of the Registered entity - It shall be valid during the entire currency of the contract including the period of extension, if any and the maintenance period after the work is completed.

1.10.3. Governing Laws - The Registered entity shall in all respect be governed by and interpreted in accordance with Indian Laws.

1.11. Authorized Member - Joint Venture members in the JV MoU shall authorize Lead members on behalf of the Joint Venture to deal with the Contract, sign the agreement or enter into contract in respect of the said tender, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said tender/contract. All notices/correspondences with respect to the contract would be sent only to this authorized member of the JV.

1.12. No member of the Joint Venture shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other members and that of the Railway in respect of the said tender/contract.

1.13. Documents to be enclosed by the JV along with the tender:

1.13.1. In case one or more of the members of the JV is/are partnership firm(s), following documents shall be submitted:

(i) A notarized copy of the Partnership Deed or a copy of the Partnership deed registered with the Registrar.

(ii) A copy of consent of all the partners or individual authorized by partnership firm, to enter into the Joint Venture Agreement on a stamp paper,

(iii) A notarized or Registered copy of Power of Attorney (duly registered as per prevailing law) in favour of the individual to sign the MOU/JV Agreement on behalf of the partnership firm and create liability against the firm.

(iv) An undertaking by all partners of the partnership firm that they are not blacklisted or debarred by Railways or any other Ministry / Department of the Govt. of India from participation in tenders / contracts as on the date of submission of bids, either in their individual capacity or in any firm/LLP in which they were / are partners/members. Any Concealment / wrong information in regard to above shall make the bid ineligible or the contract shall be determined under Clause 62 of the Standard General Conditions of Contract.

1.14.2 In case one or more members is/are Proprietary Firm or HUF, the following documents shall be enclosed:

(i) A copy of notarized affidavit on Stamp Paper declaring that his Concern is a proprietary Concern and he is sole proprietor of the Concern OR he who is signing the affidavit on behalf of HUF is in the position of 'Karta' of Hindu Undivided Family (HUF) and he has the authority, power and consent given by other members to act on behalf of HUF.

1.14.3 In case one or more members of the JV is/are companies, the following documents shall be submitted:

(i). A copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement,

(ii) The copies of MOA (Memorandum of Association) / AOA (Articles of Association) of the company

(iii) A copy of Certificate of Incorporation.

(iv) A copy of Authorization/copy of Power of Attorney issued by the Company (backed by the resolution of Board of Directors) in favour of the individual, to sign the tender, sign MOU/JV Agreement on behalf of the company and create liability against the company.

1.14.4. In case one or more members of the JV is/are LLP firm/s, the following documents shall be submitted:

(i) A copy of LLP Agreement

(ii) A copy of Certificate of Incorporation of LLP

(iii) A copy of resolution passed by partners of LLP firm, permitting the Firm to enter into a JV agreement

(iv) A copy of Authorization /copy of Power of Attorney issued by the LLP firm (backed by resolution passed by the Partners) in favour of the individual**,** to sign the tender and/or sign the MOU/ JV agreement on behalf of the LLP and create liability against the LLP.

(v) An undertaking by all partners of the LLP that they are not blacklisted or debarred by Railways or any other Ministry / Department of the

Govt. of India from participation in tenders / contracts as on the date of submission of bids, either in their individual capacity or in any firm/LLP or JV in which they were / are partners/members. Any Concealment / wrong information in regard to above shall make the contract liable for determination under Clause 62 of the Standard General Conditions of Contract.

1.14.5 In case one or more members of the JV is/are Society/s or Trust/s, the following documents shall be submitted:

(i) A copy of Certificate of Registration
(ii) A copy of Memorandum of Association of Society/Trust Deed
(iii) A copy of Rules & Regulations of the Society
(iv) A copy of Power of Attorney**,** in favour of the individual to sign the tender documents and create liability against the Society/Trust.

1.14.6. All other documents in terms of Appendix-I of this tender document.

1.14.7 A Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by the Bidders from the countries that signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.(ACS-3)

1.15 Credentials & Qualifying Criteria: Technical, financial eligibility and Bid capacity of the JV shall be adjudged based on satisfactory fulfillment of the following criteria:

1.15.1 Technical Eligibility Criteria ('a' or 'b' mentioned hereunder):

(a) For Works without composite components

The technical eligibility for the work as per para 2(A) of Appendix-I, shall be satisfied by either the 'JV in its own name & style' or 'Lead member of the JV'.

Each other (non-lead) member(s) of JV, who is/ are not satisfying the technical eligibility for the work as per para 2(A) of Appendix-I, shall have technical capacity of minimum 10% of the cost of work i.e., each non-lead member of JV member must have satisfactorily completed or substantially completed during the last 07 (seven) years, ending last day of month previous to the one in which tender is invited, one similar single work for a minimum of 10% of advertised value of the tender.

(b) For works with composite components

The technical eligibility for major component of work as per para 2(A) of Appendix-I, shall be satisfied by either the 'JV in its own name & style' or 'Lead member of the JV' and technical eligibility for other component(s) of work as per para 2(A) of Appendix-I, shall be satisfied by either the 'JV in its own name & style' or 'any member of the JV'.

Each other (non-lead) member(s) of JV, who is/ are not satisfying the technical eligibility for any component of the work as per Para 2(A) of Appendix-I, shall have technical capacity of minimum 10% of the cost of any component of work mentioned in technical eligibility criteria. i.e., each other (non-lead) member must have satisfactorily completed or substantially completed during the last 07 (seven) years, ending last day of month previous to the one in which tender is invited, one similar single work for a minimum of 10% of cost of any component of work mentioned in technical eligibility criteria.

Note:

(a) The Major component of the work for this purpose shall be the component of work having highest value. In cases where value of two or more

component of work is same, any one work can be classified as major component of work.

(b) Value of a completed work done by a Member in an earlier JV shall be reckoned only to the extent of the concerned member's share in that JV for the purpose of satisfying his/her compliance to the above mentioned technical eligibility criteria in the tender under consideration.

1.15.2 Financial Eligibility Criteria

The JV shall satisfy the requirement of "Financial Eligibility" mentioned at para 2(B) of Appendix-I. The "financial capacity" of the lead member of JV shall not be less than 51% of the financial eligibility criteria mentioned at para 2(B) of Appendix-I.

The arithmetic sum of individual "financial capacity" of all the members shall be taken as JV's "financial capacity" to satisfy this requirement.

Note: Contractual payment received by a Member in an earlier JV shall be reckoned only to the extent of the concerned member's share in that JV for the purpose of satisfying compliance of the above mentioned financial eligibility criteria in the tender under consideration.

1.15.3 Bid Capacity

The JV shall satisfy the requirement of "Bid Capacity" requirement mentioned at para 2(C) of Appendix-I. The arithmetic sum of individual "Bid capacity" of all the members shall be taken as JV's "Bid capacity" to satisfy this requirement.

APPENDIX – III
Instructions to the Tenderers

INSTRUCTIONS TO TENDERER(S) Appendix-III

A.

(i) Incomplete tenders are liable to be rejected without further correspondence.

(ii) Tenderer(s) has to go through the "Guideline & Conditions" of J O INT VENTURE included in Tender document carefully. Non-compliance of any conditions mentioned in the guideline of JV is liable to result in the tender being rejected.

(iii)

(a) In case of any information submitted by tenderer is found to be false, forged or incorrect at any time during process for evaluation of tenders, it shall lead to forfeiture of the tender Bid Security besides banning of business for a period of upto two years.

(b) In case of any information submitted by tenderer is found to be false, forged or incorrect after the award of contract, the contract shall be terminated. Bid Security, Performance Guarantee and Security Deposit available with the railway shall be forfeited. In addition, other dues of the contractor, if any, under this contract shall be forfeited and agency shall be banned for doing business for a period of upto two years. (para 11(vi) of Part-1, GCC-2022_ ACS-3)

(iv) The Railway may consider sanction of Mobilization Advance to the contractor(s) as mentioned under "Additional Special conditions of Contract" in exceptional circumstances, only for works which are capital intensive and of specialized nature.

(v) In case of other than Company/Proprietary firm, Annexure -V(A) shall be submitted by the each member of a Partnership Firm/ Joint Venture (JV) / Hindu Undivided Family (HUH / Limited Liability Partnership (LLP) etc, as the case may be. Non submission of this certificate by the bidder shall result in summarily rejection of his/their bid . It shall be mandatorily incumbent upon the tenderer to identify, state and submit the supporting documents duly self-attested/digitally signed by which they/he is qualifying the Qualifying Criteria mentioned in the Tender Document.

It will not be obligatory on the part of Tender Committee to scrutinize beyond the submitted document of tenderer as far as his qualification for the tender is concerned.(ACS-2)

Please Note that Only those documents which are declared explicitly by the tenderer as "documents supporting the claim of qualifying the laid down eligibility criteria", will be considered for evaluating his/their tender.

(a) The Railway reserves the right to verify all statements, information and documents submitted by the bidder in his tender offer, and the bidder shall, when so required by the Railway, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the railway shall not relieve the bidder of its obligations or liabilities hereunder nor will it affect any rights of the railway there under.

(b) Tenderers are required to upload the specified supporting document against the mandatory field only in the respective option tab in IREPS without that offer shall be considered incomplete and will be rejected.

(c) Tenderers are required to upload the document in readable form, illegible document(s) submitted, shall be considered incomplete and offer will be rejected.

(vi) In case of **two packet** system of tendering, the Second packet (Finance Bid) of only eligible tenderers found in the first packet (Technical Bid) will be opened.
If contents in documents submitted by tenderers are found to be incorrect/false, action will be taken against such tenderers as per tenderer declaration during submission of their bid in IREPS.

B. (i) The particulars called for in the tender should be completed in all respects and should be submitted/uploaded in the www.ireps.gov.in and up to of the date as mentioned in tender document / latest corrigendum.

(ii) Deleted.

(iii) General information about the project/work is given separately. However the tenderer(s) are advised to visit the site for appreciation before submitting of tender.

(iv) Name & mailing address of the Tenderer(s) shall be clearly mentioned in ENGLISH language.

(v) All the information requested for this Tender shall be answered in the ENGLISH language. Where information is provided in another language, this shall be accompanied by a translation of its pertinent parts into ENGLISH. This translation will govern and be used for interpreting the information.

(vi) Failure to provide information which are essential to evaluate the Tenderer(s) qualifications, or failure to provide timely clarification or substantiation of the information supplied may result in disqualification of the Tenderer(s).

(vii) The railway reserves the right to:

a) Amend the scope and value of the work.

b) Reject or accept any tender; and

c) Cancel the tender process and reject any or all tenders, at any time.

(viii) Right of Railway to Deal with Tenders: The Railway reserves the right of not to invite tenders for any of Railway work or works or to invite open or limited tenders and when tenders are called to accept a tender in whole or in part or reject any tender or all tenders without assigning reasons for any such action. In case if tender is accepted in part by Railway administration, Letter of Acceptance shall be issued as counter offer to the Tenderer, which shall be subject to acceptance by the Tenderer.

(ix) Clarification of Bids: To assist in the examination, evaluation & comparison and pre-qualification of the Tender, the Railway may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Railway shall not be entertained or considered. The Railway request for clarification and the response of the bidder in this regard shall be in writing.

However, if a Bidder does not provide clarification of its bid by the date and time communicated in the Railway request for clarification, the bid shall be evaluated as per the documents submitted along with the bid

(x) The tenderer(s) have to fill up –

a) Application of AFFIDAVIT as stated in Annexure-'A' for Firms under Joint Venture/Consortium companies.

b) All the documents as stated in the checklist available.

(xi) Participation of Partnership Firms in works tenders:

a) The Partnership Firms participating in the tender should be legally valid under the provisions of the Indian Partnership Act.

b) The partnership firm should have been in existence or should have been formed prior to submission of tender. Partnership firm should have either been registered with the Registrar or the partnership deed should have been notarized prior to date of tender opening as per the Indian Partnership Act, prior to submission of tender.

c) Separate identity / name should be given to the partnership firm. The partnership firm should have PAN / TAN number in its own name and PAN / TAN number in the name of any of the constituent partners shall not be considered. The valid constituents of the firm shall be called partners.

d) Once the tender has been submitted, the constitution of the firm shall not be allowed to be modified / altered / terminated during the validity of the tender as well as the currency of the contract except when modification becomes inevitable due to succession laws etc., in which case prior permission should be taken from Railway and in any case the minimum eligibility criteria should not get vitiated. The re-constitution of firm in such cases should be followed by a notary certified Supplementary Deed. The approval for change of constitution of the firm, in any case, shall be at the sole discretion of the Railways and the tenderer shall have no claims what-so-ever. Any change in the constitution of Partnership firm after submission of tender shall be with the consent of all partners and with the signatures of all partners as that in the Partnership Deed. Failure to observe this requirement shall render the offer invalid and full Bid Security shall be forfeited.

If any Partner/s withdraws from the firm after submission of the tender and before the award of the contract, the offer shall be rejected and Bid Security of the tenderer shall be forfeited. If any new partner joins the firm after submission of tender but prior to award of contract, his / her credentials shall not qualify for consideration towards eligibility criteria either individually or in proportion to his share in the previous firm. In case the tenderer fails to inform Railway beforehand about any such changes / modification in the constitution which is inevitable due to succession laws etc. and the contract is awarded to such firm, then it will be considered a breach of the contract conditions liable for determination of the contract under Clause 62 of the Standard General Conditions of Contract.

e) A partner of the firm shall not be permitted to participate either in his individual capacity or as a partner of any other firm in the same tender.

f) The tender form shall be submitted only in the name of partnership firm. The Bid Security shall be submitted by partnership firm through e-payment gateway or as mentioned in tender document. The Bid Security submitted in the name of any individual partner or in the name of authorized partner (s) shall not be considered.

g) On issue of Letter of Acceptance (LOA) to the partnership firm, all the guarantees like Performance Guarantee, Guarantee for various Advances to the Contractor shall be submitted only in the name of the partnership firm and no splitting of guarantees among the partners shall be acceptable.

h) On issue of Letter of Acceptance (LOA), contract agreement with partnership firm shall be executed in the name of the firm only and not in the name of any individual partner.

i) In case the Letter of Acceptance (LOA) is issued to a partnership firm, the following undertakings shall be furnished by all the partners through a notarized affidavit, before signing of contract agreement.

1. Joint and several liabilities: The partners of the firm to which the Letter of Acceptance (LOA) is issued, shall be jointly and severally liable to the Railway for execution of the contract in accordance with General and Special Conditions of the Contract. The partners shall also be liable jointly and severally for the loss, damages caused to the Railway during the course of execution of the contract or due to non-execution of the contract or part thereof.

2. Duration of the partnership deed and partnership firm agreement: The partnership deed/partnership firm agreement shall normally not be modified/altered/ terminated during the currency of contract and the maintenance period after the work is completed as contemplated in the conditions of the contract. Any change carried out by partners in the constitution of the firm without permission of Railway,

shall constitute a breach of the contract, liable for determination of the contract under Clause 62 of the Standard General Conditions of Contract.

3. Governing laws: The partnership firm agreement shall in all respect be governed by and interpreted in accordance with the Indian laws.
4. No partner of the firm shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other partner/s and that of the Railway.

j) The tenderer shall clearly specify that the tender is submitted on behalf of a partnership firm. The following documents shall be submitted by the partnership firm, with the tender:

1. A notarized copy of partnership deed or a copy of the Partnership deed registered with the Registrar.
2. A notarized or registered copy of Power of Attorney in favour of the individual to tender for the work, sign the agreement etc. and create liability against the firm.
3. An undertaking by all partners of the partnership firm that they are not blacklisted or debarred by Railways or any other Ministry / Department of the Govt. of India from participation in tenders / contracts as on the date of submission of bids, either in their individual capacity or in any firm/LLP in which they were / are partners/members. Any Concealment / wrong information in regard to above shall make the bid ineligible or the contract shall be determined under Clause 62 of the Standard General Conditions of Contract.
4. All other documents in terms of Appendix-I of this tender document

k) Evaluation of eligibility of a partnership firm

Technical and financial eligibility of the firm shall be adjudged based on satisfactory fulfillment of the eligibility criteria laid down in para- 2 of Appendix-I of tender document.

(xii) The tenderer shall clearly specify whether the tender is submitted on his own (Proprietary Firm) or on behalf of a Partnership Firm / Company / Joint Venture (JV) / Registered Society / Registered Trust/ Hindu Undivided Family (HUF) / Limited Liability Partnership (LLP) etc. The tenderer(s) shall enclose the attested copies of the constitution of their concern, and copy of PAN Card along with their tender. Tender Documents in such cases are to be signed by such persons as may be legally competent to sign them on behalf of the firm, company, association, trust or society, as the case may be.

(xiii) Following documents shall be submitted by the tenderer:

a) Sole Proprietorship Firm:
   (i) All documents in terms of Appendix-I of this tender document.

b) HUF:
   (i) A copy of notarized affidavit on Stamp Paper declaring that he who is submitting the tender on behalf of HUF is in the position of 'Karta' of Hindu Undivided Family (HUF) and he has the authority, power and consent given by other members to act on behalf of HUF.
   (ii) All other documents in terms of Appendix-I of this tender document.

c) Partnership Firm:
   (i) All documents as mentioned in clause B (xi) of Appendix-III of the Tender document.

d) Joint Venture (JV): All documents as mentioned in JV guidelines & conditions of tender document (Appendix-II), if applicable.

e) Company registered under Companies Act-2013:

   (i) The copies of MOA (Memorandum of Association) / AOA (Articles of Association) of the company
   (ii) A copy of Certificate of Incorporation

(iii) A copy of Authorization/Power of Attorney issued by the Company (backed by the resolution of Board of Directors) in favour of the individual to sign the tender on behalf of the company and create liability against the company.

(iv) All other documents in terms of Appendix-I of this tender document

f) LLP (Limited Liability Partnership) Firm: If the tender is submitted on behalf of a LLP registered under LLP Act-2008, the tenderer shall submit along with the tender:

(i) A copy of LLP Agreement

(ii) A copy of Certificate of Incorporation

(iii) A copy of Power of Attorney/Authorization issued by the LLP in favour of the individual to sign the tender on behalf of the LLP and create liability against the LLP.

(iv) An undertaking by all partners of the LLP that they are not blacklisted or debarred by Railways or any other Ministry / Department of the Govt. of India from participation in tenders / contracts as on the date of submission of bids, either in their individual capacity or in any firm/LLP or JV in which they were / are partners/members. Concealment / wrong information in regard to above shall make the contract liable for determination under Clause 62 of the Standard General Conditions of Contract.

(v) All other documents in terms of Appendix-I of this tender document.

g) Registered Society & Registered Trust:

(i) A copy of the Certificate of Registration

(ii) A copy of Memorandum of Association of Society/Trust Deed

(iii) A copy of Power of Attorney in favour of the individual to sign the tender documents and create liability against the Society/Trust.

(iv) A copy of Rules & Regulations of the Society

(v) All other documents in terms of Appendix-I of this tender document.

(xiv) If it is NOT mentioned in the submitted tender that tender is being submitted on behalf of a Sole Proprietorship firm / Partnership firm / Joint Venture / Registered Company etc., then the tender shall be treated as having been submitted by the individual who has signed the tender.

(xv) After opening of the tender, any document pertaining to the constitution of Sole Proprietorship Firm / Partnership Firm / Registered Company/ Registered Trust / Registered Society / HUF /LLP etc. shall be neither asked nor considered, if submitted. Further, no suo moto cognizance of any document available in public domain (i.e., on internet etc.) or in Railway's record/office files etc. will be taken for consideration of the tender, if no such mention is available in tender offer submitted.

(xvi) A tender from JV / Partnership firm etc. shall be considered only where permissible as per the tender conditions.

(xvii) The Railway will not be bound by any change of power of attorney or in the composition of the firm made subsequent to the submission of tender. Railway may, however, recognize such power of attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the Contractor.

(xviii) The tenderer whether sole proprietor / a company or a partnership firm / registered society / registered trust/HUF/LLP etc if they want to act through agent or individual partner(s), should submit along with the tender, a copy of power of attorney duly stamped and authenticated by a Notary Public or by Magistrate in favour of the specific person whether he/they be partner(s) of the firm or any other person specifically authorizing him/them to sign the tender, submit the tender and further to deal with the Tender/ Contract up to the stage of signing the agreement except in case where such specific person is authorized for above purposes through a provision made in the partnership deed / Memorandum of Understanding / Article of Association /Board resolution, failing which tender shall be summarily rejected.

A separate power of attorney duly stamped and authenticated by a Notary Public or by Magistrate in favour of the specific person whether he/they be partner(s) of the firm or any

other person, shall be submitted after award of work, specifically authorizing him/them to deal with all other contractual activities subsequent to signing of agreement, if required.
Note: A Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the powers of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.

(xix) The Railway reserves the right to reject any or all offers without assigning any reasons and his decision shall be final and binding.

(xx) Tenderer(s) are compulsorily required to indicate page number in the check list against relevant documents submitted by him / them along with Part-I (Technical Bid) document.

(xxi) If the tenderer(s) are JV firm, all the documents like MOU / JV agreement, Affidavit, Power of Attorney etc. are to be submitted together.

C. Illegal Gratification:

Procuring authorities as well as bidders, contractors and consultants should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

i) "**Corrupt practice**": making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;

ii) "**Fraudulent practice**": any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;

iii) "**Anti-competitive practice**": any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the procuring entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;

iv) "**Coercive practice**": any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process or affect the execution of a contract;

v) "**Conflict of interest**" (COI): any personal, financial, or business relationship between the bidder and any personnel of the procuring entity who are directly or indirectly related to the procurement or execution process of the contract, which can affect the decision of the procuring entity directly or indirectly;

vi) "**Undue Advantage**": improper use of information obtained by the bidder from the procuring entity with an intent to gain an unfair advantage in the procurement process or for personal gain. This also includes if the bidder (or his allied firm) provided services for the need assessment/procurement planning of the tender process in which he is participating;

vii) "**Obstructive practice**": materially impede the procuring entity's investigation of a procurement process either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation or by making false statements or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation; or by impeding the procuring entity's rights of audit or access to information.

D. Punitive Provisions:

Without prejudice to and in addition to the rights of the procuring entity to other penal provisions as per the bid documents or contract, if the procuring entity comes to a conclusion that a (prospective) bidder/contractor directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the procuring entity may take appropriate measures including one or more of the following:

i) If his bids are under consideration in any procurement

a) Forfeiture or encashment of bid security;

b) calling off of any pre-contract negotiations; and

c) rejection and exclusion of the bidder from the procurement process.

ii) If a contract has already been awarded

a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;

b) Forfeiture or encashment of any other security or bond relating to the procurement;

c) Recovery of payments including advance payments, if any, made by the procuring entity along with interest thereon at the prevailing rate;

iii) Provisions in addition to above:

a) Removal from the list of enlisted contractors and banning/debarment of the bidder from participation in future procurements of the procuring entity for a period not less than one year;

b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;

c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

Any question or dispute as to the commission of any such offence or compensation payable to the Railway under this Clause shall be settled by the General Manager of the Railway, in such a manner as he shall consider fit & sufficient and his decision shall be final & conclusive.

APPENDIX-IV

Regulations for the Guidance of Tenderers

Appendix-IV

NORTHEASTFRONTIER RAILWAY (CONSTRUCTION)
(TENDER FORM FIRST SHEET)

Issued to/Downloaded …… From website by

TENDERNO.

Name of work:

Approx. Value (Tender Value) =Rs.

To
The President of India,
Acting Through the Chief Engineer (Con), Northeast Frontier Railway, Maligaon, Guwahati – 781 011.

I/We have read the various conditions to tender attached hereto and agree to abide by the said conditions. I/We also agree to keep this offer open for acceptance for a period of 60/90 (Single Packet/Two Packet) days from the date fixed for closing of tender and in default thereof, I/We will be liable for forfeiture of my/our "Bid Security". I/We offer to do the work for Railway, at the rates quoted in the attached bill(s) of quantities and hereby bind myself/ourselves to complete the work in all respects within__months from the date of issue of letter of acceptance of the tender.

2. I/We also hereby agree to abide by the Indian Railways Standard General Conditions of Contract, with all correction slips up-to-date and to carry out the work according to the Special Conditions of Contract and Specifications of materials and works as laid down by Railway in the annexed Special Conditions/Specifications, Standard Schedule of Rates (SSOR) with all correction slips up-to-date for the present contract.

3. A Bid Security of ₹ _____has already been deposited online/ submitted as Bank Guarantee bond. Full value of the Bid Security shall stand forfeited without prejudice to any other right or remedies in case my/our Tender is accepted and if:

(a) I/We do not submit the Performance Guarantee within the time specified in the Tender document;
(b) I/We do not execute the contract documents within seven days after receipt of notice issued by the Railway that such documents are ready; and
(c) I/We do not commence the work within fifteen days after receipt of orders to that effect.

4. (a) I/We am/are a Startup firm registered by .....Department of Industrial Policy and Promotion (DIPP) and my registration number is ……. valid upto ……. (Copy enclosed) and hence exempted from submission of Bid Security

5. We are a Labour Cooperative Society and our Registration No. is …….. with ..... and hence required to deposit only 50% of Bid Security.

6. Until a formal agreement is prepared and executed, acceptance of this tender shall constitute a binding contract between us subject to modifications, as may be mutually agreed to between us and indicated in the letter of acceptance of my/our offer for this work.

Signature of Witnesses:

(1) _____

(2) _____

Signature of Tenderer(s)

Date_____

Address of Tenderer(s)

_____

NORTHEAST FRONTIER RAILWAY
(CONSTRUCTION)
(TENDER FORM SECOND SHEET)

Regulations for the Guidance of Tenderers

1. The following documents shall form part of the contract: -

(a) Tender form –FIRST AND SECOND SHEET.
(b) Special Conditions/Specifications (enclosed)
(C) Bill(s) of quantities and Abstract of Schedule Schedule of items of works Schedule of items of works and estimated cost. (enclosed)
(d) Indian Railways Standard General Conditions of Contract – 2022
(e) Indian Railway Unified Standard Specification 2021 edition and NFRUSSOR Schedule of Rates (for works and Materials)2021 edition corrected up to latest correction slip.

(f) Additional Special Conditions of Contract.
(g) Special Conditions and Special Specifications for the work.
(h) Agreement forms.
(i) All general and detailed drawings pertaining to this work which will be issued by the Engineer or his representatives (from time to time) with all changes and modifications.
(j) Indian Railway Engg. Code 2012 latest Revised Edition.
(k) IR Specifications/Guidelines
(l) Relevant B.I.S Codes.

(m) CPWD Delhi schedule of Rates(DSR-2023)(DSR-Vol. I, DSR-Vol. II, DSR-Horticulture and Landscaping-2020), Analysis of Rate for DSR (AOR-Vol. I, AOR-Vol. II)-2023 & CPWD specification (Vol. I, Vol. II) for execution of all civil Engineering work related to Building work, Road work and Horticulture work etc.(except Formation work, Bridge work and P. Way works)

2. INSTRUCTIONS TO TENDERER(S)

A. Each and every page of forms and requisite documents as per tender condition are to be downloaded & signed by the tenderer/s under seal of the participating firm/tenderer before submission. If the tenderer/s is/are a partnership/JV firm, it shall be signed by the authorized partner of the firm only.

(i) Incomplete tenders are liable to be rejected without further correspondence.
(ii) Tenderer/s has to go through the "Guideline & Conditions" of JOINT VENTURE (if applicable) included in Tender document c a r e f ul l y . Non-compliance of any conditions mentioned in the guideline of JV is liable to result in the tender being rejected.

B.

(i) The drawings for the works can be seen in the office of the Dy. Chief Engineer/Construction/Kohima Northeast Frontier Railway, Kohima, Nagaland at any time during office hours.
Detailed working drawings (if required) based generally on the drawing mentioned above, will be given by the Engineer or his representative from time to time.

(ii) (a) Indian Railways Standard General Conditions of Contracts-2022
(b) Indian Railway Unified Standard Specification 2021 edition and (c) N F R USSOR Schedule of Rates (for works and Materials) 2021 edition corrected up to date can be seen in the office of the Chief Engineer/Con/N. F. Railway or can be had on payment, if available.

(iii) Rates enter in to rate page shall only be considered. Rates offered in any other form /letter by the tenderer shall not be considered. The Tenderer(s)/Contractor(s) have to quote rates in percentage above/below/at par rate only in the schedule. The quantities in attached Bill(s) of Quantities of work are given as a guide and are

approximate only and are subject to variation according to the need during execution of the work. The Railway accepts no responsibility for the accuracy. The Railway does not guarantee work under the items of the Bill(s) of Quantities.

(iv) All documents and entries in the tender shall be either type written or in ink and in English. Tender containing additions and alterations to the form for tender documents are liable to be rejected. Any correction made by the Tenderer(s) in his entries must be attested by him.

(v) Rates should be quoted inclusive of GST or any other local tax, royalty etc. Unless specified to the contrary in the tender documents.

C. Tenderers should observe the highest standard of ethics while submitting the Tender Document.

(a) Railways will disqualify tenderer(s), if they have made misleading or false representation in the form, statements a n d attachments submitted; or indulge in fraudulent and corrupt practice.

i) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the tendering process or in contract execution; and

ii) "Fraudulent practice" means a misrepresentation of facts in order to influence and evaluation process or the execution of a contract, and includes collusive practices among Tenderers (prior to or after Tender submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the client's free and open competitions.

(b) Further Railways may declare a Tenderer ineligible, for any Railways contract if it at any time determines that the Tenderer has engaged in corrupt or fraudulent practices in completing for, or in executing, a borrowed financed contract in general; or defines, for the purpose of this provision, the terms set forth below as follows:

(i) Records of poor performance during the last 5 years, as on the date of submission of tender such as abandoning the work, rescinding of contract for which the reasons are attributable to the non-performance of the contractor.

(ii) Inordinate delays in completion, consistent history of litigation awarded against the tenderer/contractor or any of its constituents or financial failure due to bankruptcy etc. If the Contractor has worked in a Joint Venture, the rescinding of contract of a Joint Venture on account of reasons other than non-performance, such as Most Experienced Partner (Lead Partner) of Joint Venture pulling out.

or

(iii) Been debarred (blacklisted) by any Government agencies as on the date of application.

3.0 SIGNING OF TENDERS:

Any individual/s signing the Tender or other documents connected therewith should specify whether he is signing:

i) As Sole Proprietor of the concern or his Attorney, or
ii) As a Partner or Partners of the Firm, or
iii) For the Firm per procuration, or
iv) As a Director, Manager or Secretary in the case of Limited Company.

4.0 BID SECURITY

4.1 (a) Subject to exemptions provided under para 5(1) (a) of Part-1 (ITT) of GCC, 2022, the tender must be accompanied by a Bid Security as mentioned in tender documents, failing which the tender shall be summarily rejected.

(b) The Tenderer(s) shall keep the offer open for a minimum period of 60 days (in case of two packet system of tendering 90days) from the date of closing of the Tender. It is understood that the tender documents have been issued to the Tenderer(s) and the Tenderer(s), is / are permitted to tender in consideration of the stipulation on his / their part that after submitting his / their tender subject to the period being extended further, if required by

mutual agreement from time to time, he will not resile from his offer or modify the terms and conditions thereof in a manner not acceptable to Engineer.

Should the tenderer fail to observe or comply with the foregoing stipulation, the amount deposited or Bank guarantee bond submitted as Bid Security for the due performance of the above stipulation shall be forfeited to the Railway.

(c) If his tender is accepted,

(i) the Bid Security mentioned in Appendix-I above deposited in cash through e-payment gateway will be retained as part security for the due and faithful fulfilment of the contract in terms of Clause 16 of the Standard General Conditions of Contract;

(ii) the Bid Security mentioned in Appendix-I above submitted as Bank guarantee bond, will be encashed as part security for the due and faithful fulfilment of the contract in terms of Clause 16 of the Standard General Conditions of Contract.

The Bid Security of other Tenderers shall, save as herein before provided, be returned to them, but the Railway shall not be responsible for any loss or depreciation to the Bid Security that may happen thereto while in their possession, nor be liable to pay interest thereon.

(d) In case Contractor submits the Term Deposit Receipt/Bank Guarantee Bond towards either the Full Security Deposit or the Part Security Deposit equal to or more than Bid Security, the Railway shall return the Bid Security so retained as Appendix-I above, to the Contractor.

(e) (i) Bid-Security of the successful bidder will be returned after submission of Security-Deposit, as per clause -16 (GCC-2022 part-II) and clause-5(GCC-2022 part-I).

(ii) The Bid Security of unsuccessful tenderers shall be returned to them after finalization of tender as per clause-5(GCC-2022 part-I).

5.0 TENDERER CREDENTIALS

5.1 Documents testifying tenderer previous experience and financial status should be produced along with the tender.

(i) Certificates and testimonials regarding contracting experience for the type of job for which tender is invited with list of works carried out in the past.

(ii) Audited Balance Sheet duly certified by the Chartered Accountant regarding contractual payments received in the past.

(iii) The list of personnel / organization on hand and proposed to be engaged for the tendered work. Similarly list of Plant & Machinery available on hand and proposed to be inducted and hired for the tendered work.

(iv) (a) In case of any information submitted by tenderer is found to be false, forged or incorrect at any time during process for evaluation of tenders, it shall lead to forfeiture of the tender Bid Security besides banning of business for a period of upto two years.

(b) In case of any information submitted by tenderer is found to be false, forged or incorrect after the award of contract, the contract shall be terminated. Bid Security, Performance Guarantee and Security Deposit available with the railway shall be forfeited. In addition, other dues of the contractor, if any, under this contract shall be forfeited and agency shall be banned for doing business for a period of upto two years.

5.2 In case of other than Company/Proprietary firm, Annexure -V(A) shall be submitted by the each member of a Partnership Firm/ Joint Venture (JV) / Hindu Undivided Family (HUH / Limited Liability Partnership (LLP) etc, as the case may be. Non submission of this certificate by the bidder shall result in summarily rejection of his/their bid . It shall be mandatorily incumbent upon the tenderer to identify, state and submit the supporting documents duly self-attested/digitally signed by which they/he is qualifying the Qualifying Criteria mentioned in the Tender Document.

It will not be obligatory on the part of Tender Committee to scrutinize beyond the submitted document of tenderer as far as his qualification for the tender is concerned.(ACS-2)

(a) The Railway reserves the right to verify all statements, information and documents submitted by the bidder in his tender offer, and the bidder shall, when so required by the Railway, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the railway shall not relieve the bidder of its obligations or liabilities hereunder nor will it affect any rights of the railway there under.

5.3 Non-compliance with any of the conditions set forth therein above is liable to result in the tender being rejected.

6.0 Acceptance of Tender:

6.1 The authority for the acceptance of the tender will rest with General Manager/CON/N. F. Railway, Maligaon, Chief Administrative officer/CON/Maligaon, Chief Engineer/CON/Maligaon, Dy Chief Engineer/Con of field units for and on behalf of President of India who does not bind himself to accept the lowest or any other tender nor does he undertake to assign reasons for declining to consider any particular tender or tenders. No tenderer(s) shall demand any explanation on the cause of rejection of his/their tender.

6.2 Documents submitted by the tenderer(s) shall become the property of Railway and the Railway shall have no obligation to return the same.

6.3 If the tenderer(s) deliberately gives / give wrong information in his / their tender or creates / create circumstances for the acceptance of his / their tender, the Railway reserves the right to reject such tender at any stage.

6.4 If any partner(s) of a partnership firm expires after the submission of its tender or after the acceptance of its tender, the Railway shall deem such tender as cancelled/contract as terminated under clause 61 of the Standard General Conditions of Contract, unless the firm retains its character as per partnership agreement. If a sole proprietor expires after the submission of tender or after the acceptance of tender, the Railway shall deem such tender as cancelled / contract as terminated under clause 61 of the Standard General Conditions of Contract.

6.6 Conditional discounts offered by the tenderers for coverage within a shorter period, for early inspection/payment etc. shall not be considered for evaluation of tender.

7.0 Execution of Contractdocument :

7.1 The Tenderer whose tender is accepted shall be required to appear in person at the office of General Manager/General Manager (Construction), Chief Administrative Officer (Construction), Chief Engineer(Construction) or concerned Engineer, as the case may be, or if tenderer is a firm or corporation, a duly authorized representative shall appear (there would be no need for appear in person if agreement is signed digitally) and

execute the contract agreement within seven days of notice from Railways that the Contract Agreement is ready. Failure to do so shall constitute a breach of the agreement affected by the acceptance of the tender. The Contract Agreement shall be entered into by Railway only after submission of valid Performance Guarantee by the Contractor. In such cases the Railway may determine that such tenderer has abandoned the contract and there upon his tender and acceptance thereof shall be treated as cancelled and the Railway shall be entitled to forfeit the full amount of the Bid Security and other dues payable to the Contractor under this contract. The failed Contractor shall be debarred from participating in the re-tender for that work.

7.2 The tenderer whose tender is accepted shall be required to execute Novation Agreement (Annexure-Q) as per latest guidelines of Railway Board (Ministry of Railways).

7.3 **Employment/Partnership etc. of Retired Railway Employees:**

(a) Should a tenderer

i) be a retired Engineer of the gazetted rank or any other gazetted officer working before his retirement, whether in the executive or administrative capacity or whether holding a pensionable post or not, in the Engineering or any other department of any of the railways owned and administered by the President of India for the time being, OR

ii) being partnership firm / joint venture (JV) / registered society / registered trust etc have as one of its partners/members a retired Engineer of the gazetted rank or any other gazetted officer working before his retirement, OR

iii) being an incorporated company have any such retired Engineer of the gazetted rank or any other gazetted officer working before his retirement as one of its directors

AND

in case where such Engineer or officer had not retired from government service at least 1 year prior to the date of submission of the tender

THEN

the tenderer will give full information as to the date of retirement of such Engineer or gazetted officer from the said service and as to whether permission for taking such contract, or if the Contractor be a partnership firm or an incorporated company, to become a partner or director as the case may be, has been obtained by the tenderer or the Engineer or officer, as the case may be from the President of India or any officer, duly authorized by him in this behalf, shall be clearly stated in writing at the time of submitting the tender.

(b) In case, upon successful award of contract, should a tenderer depute for execution of the works under or to deal matters related with this contract, any retired Engineer of gazette rank or retired gazetted officer working before his retirement in the Engineering or any other department of any of the railways owned and administered by the President of India for the time being, and now in his employment, then the tenderer will ensure that retired Engineer or retired gazetted officer had retired from government service at least 1 year prior to the date of his employment with tenderer and in case he had retired from service within a year then he possesses the requisite permission from the President of India or any officer, duly authorized by him in this behalf, to get associated with the tenderer.

(c) Should a tenderer or Contractor being an individual, have member(s) of his family or in the case of partnership firm/ company / joint venture (JV) / registered society / registered trust etc. one or more of his partner(s)/shareholder(s) or member(s) of the family of partner(s)/shareholder(s)having share of more than 1% in the tendering entity employed in gazetted capacity in the Engineering or any other department of the railway, then the tenderer at the time of submission of tender, will inform the authority inviting tenders the details of such persons.

Note:-If information as required as per 7.3 a, b & c above has not been furnished, contract is liable to be dealt in accordance with provision of clause 62 of Standard General Condition of contract.

A declaration form (proforma attached - Annexure-D) to this effect should be signed and enclosed with the tender.

8.0 The Railway will not be bound by any power of attorney granted by the tenderer or by changes in the composition of the firm made subsequent to the execution of the contract. It may, however, recognize such power of attorney and changes after obtaining proper legal advice the cost of which will be chargeable to the contractor.

9.0 The tenderer whether sole proprietor, a company or a partnership firm / joint venture (JV) / registered society / registered trust etc if they want to act through agent or individual partner(s), should submit along with the tender, a copy of power of attorney duly stamped and authenticated by a Notary Public or by Magistrate in favour of the specific person whether he/they be partner(s) of the firm or any other person specifically authorizing him/them to submit the tender, sign the agreement, receive money, co - ordinate measurements through contractor's authorized engineer, witness measurements, sign measurement books, compromise, settle, relinquish any claim(s) preferred by the firm and sign "No Claim Certificate" and refer all or any disputes to arbitration.

10.0 The Railway reserves the right to accept a tender in whole or in part or reject any tender or all tenders without assigning reasons for any such action.

11.0 Negotiations with tenderer(s)

The Railway reserve the right to hold negotiations with the bidder who should be lowest, valid, eligible and technically acceptable tenderer considered for award of contract directly if the rates were not unreasonably high.

12.0 Inspection of site

Before submitting a tender, the tenderer will be deemed to have satisfied himself by actual inspection of the site and locality of the works, that all conditions liable to be encountered during the execution of the works are taken into account and that the rates he enters in the tender forms are adequate and all inclusive to accord with the provisions in Clause-37 of the Standard General Conditions of Contract for the completion of works to the entire satisfaction of the Engineer.

13.0 Examination of Documents

The submission of the tender shall be deemed to have been done after careful study and examination of the tender document with full understanding of the implications thereof. Any clarification required by a tenderer shall be obtained from the office inviting tenders on any working day.

14.0 Tender documents are not transferable.

15.0 Sequence of work

15.1 The contractor(s) shall comply with the order of engineer in charge in regard to the sequences of tackling and progressing component parts of works.

16.0 Accepted programme of work

16.1 The Contractor who has been awarded the work shall as soon as possible but not later than 30 days after the date of receipt of the acceptance letter in respect of contracts with initial completion period of two years or less or not later than 90 days for other contracts have to submit the detailed programme of work indicating the time schedule of various items of works in the form of Bar Chart/PERT/CPM. He shall also submit the details of organization (in terms of labour and supervisors), plant and machinery that he intends to utilize (from time to time) for execution of the work within stipulated date of completion. The programme of work amended as necessary by discussions with the Engineer, shall be treated as the agreed programme of the work for the purpose of this contract and the Contractor shall endeavor to fulfill this programme of work. The progress of work will be watched accordingly and the liquidated damages will be with reference to the overall completion date. Nothing stated herein shall preclude the Contractor in achieving earlier completion of item or whole of the works than indicated in the programme.

In Contracts for works of New Line/Gauge Conversion/Doubling/Railway Electrification, finalized through Tenders having advertised value more than Rs.100crores, the Contractor shall submit a detailed time programme to the Engineer within 30 days after issue of LOA. The program shall include the physical and Financial Progress vis-à-vis program and forecast cash flow adopting Project Management Software such as Primavera/Sure Track/MS Project etc. The program must identify the milestones, interface requirements and program reporting elements. The Contractor shall supply, free of cost one set of authorized software to the Engineer and the soft copy of structured program for the project. This shall be updated every month. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress. Each programme shall include:

The order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage, Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing, each of these stages for work by each Subcontractor, if any, the sequence and timing of inspections and tests specified in the Contract, and a supporting report which includes:

a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and details showing the Contractor's reasonable estimate for the number of each class of Contractor's Personnel &Equipment, required on the Site for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Engineer shall be entitled to rely upon the programme when planning their activities.

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer within 15 days in accordance with this Sub-Clause.

17. Restrictions and exclusions from restrictions under Rule 144 (xi) of General Financial Rules (GFRs), 2017

17.1.

Permission to Bid for a bidder from a country which shares Land boundary with India: Any bidder from the countries sharing a land border with India will be eligible to bid in any procurement of works (including turnkey projects) only if the bidder is registered with the Competent Authority. The Competent Authority for registration will be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), Government of India. For interpretation of this para, Department of Expenditure, Ministry of Finance, Government of India letter F.No.6/18/2019-PPD dated 23/07/2020 shall be referred.

Note: The order will not apply to bidders from those countries(even if sharing land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of Ministry of External Affairs.

17.2 "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies). every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

17.3 "Bidder from a country which shares a land border with India" for the purpose of this Order means

a. An entity incorporated, established or registered in such a country; or

b. A subsidiary of an entity incorporated, established or registered in such a country; or

c. An entity substantially controlled through entities incorporated, established or registered in such a country; or

d. An entity whose beneficial owner is situated in such a country; or

e. An Indian (or other) agent of such an entity; or

f. A natural person who is a citizen of such a country; or

g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

17.4 The beneficial owner for the purpose of 17.3 above will be as under:

(i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation-

a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;

b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

(ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

(iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

(iv) Where no natural person is identified under (i) or (ii) or (iii) above the beneficial owner is the relevant natural person who holds the position of senior managing official.

(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

17.5 "Agent" is a person employed to do any act for another, or to represent another in dealings with third person.

Sub-contracting in works contracts:

17.6 The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

17.7 Certificate to be submitted by the bidder regarding their compliance is as under. If such certificate given by a bidder whose bid is accepted & later on found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Certificate to be

(i) Model Certificate for Tenders:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; i certify that this bidder is not from such a country or if from such a country, has been registered with the competent authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. (Where applicable, evidence of valid registration by the competent authority shall be attached.)"

(ii) Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

17.8 Validity of registration

In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance /placement of order, registration shall not be a relevant consideration during contract execution.