

## **Chapter-I**

### **Eastern Railway Office of the Division Railway Manager Howrah - 711101**

#### **INSTRUCTIONS TO TENDERERS For e-Tenders**

##### **1.0 GENERAL**

1.1 E-tender have been invited for and on behalf of the President of India through website [www.ireps.gov.in](http://www.ireps.gov.in) for the work mentioned against the tender notice number available in the website. Tenderers are to bid online only in the above mentioned website. All Mandatory fields marked with (\*) have to be filled in by the tenderer. No Manual offer is acceptable against this tender no. and tender. No Tender document in hard copy will be sold against this tender no. Please read the Instructions to Tenderers for e-tendering, General Conditions of Contract, Special Condition of Contract before filling the e- tender online.

1.2 E-Tender forms are not transferable and the same is to be submitted with digital signature by personnel already registered with the site.

1.3 The submitted e-tender forms will be considered as digitally signed by the tenderer as a confirmation from the tenderer that the tenderer has read, agreed and accepted all the conditions and laid down documents referred in para 1.2 above as well as Schedule of Tender, General and Special Conditions.

1.4 The tender offer complete in all respect and with all documents is to be submitted online by e-tendering process through the website [www.ireps.gov.in](http://www.ireps.gov.in) before the closing time/date of this tender as mentioned in the NIT (Notice Inviting Tender). Tenderer can revise the bids any number of times till the closing time/date of the tender. No manual offers shall be accepted.

1.5 Corrigendum Notice on IREPS- For the purpose of Corrigendum in the Tender, NIT period is splitted as under:

a) Advertisement period- Time during which all information pertaining to tender shall be available but offers cannot be submitted.

b) Offer submission period- Fifteen days prior to closing of tender, during which tenderers can submit their offer.

Issue of 'corrigendum notice' is permitted as an exception only during Advertisement period.

No corrigendum is permitted during offer submission period and cases requiring corrigendum during offer submission period shall be retendered. Authority Railway Board's letter no.2015/CE-I/CT/5/1 dtd.31.08.2016.

1.6 This document is the Standard Tender Document which consists of the Instruction to the Tenderers, NIT (Notice Inviting Tender), General Conditions of the Tender, Special conditions of the tender, Specifications of the works & various Annexures etc.

All the above mentioned documents taken together if not scored off, shall constitute the complete tender document hereafter referred to as “Tender Document” & have to be read together & acted upon accordingly. No part of the tender document can be relied upon or acted upon in isolation.

1.7 The Railway and the website will have no responsibility for incorrect evaluation of cost and thereby incorrect cost of work and ranking of tenderers, if the schedule is not filled in correctly and unambiguously for each item. No claim or clarification of a tenderer regarding applicability, inclusion or exclusion of any element of tax or duty or any other change in the offer subsequently (after opening of the tender) will be entertained. For this the tenderers are advised to read the Instructions, General Conditions, Special Conditions and other Instructions carefully before submission of tender.

1.8 In case of any problem with the portal is faced while filling the e-tender, Tenderers are advised to contact with the Helpdesk of IREPS portal who will render all help and assistance related with the website and portal except that related with the details of the tender. Railway will not take any responsibility for non-participation in the e-tender online for the reasons related to the website and portal or server etc beyond the control of railways.

1.9 Railway and the IREPS website will not take the responsibility for any online payment made by the tenderer and debited from his/their account towards the tender cost or Bid Security due to wrong or mis-manipulation of the menus or any reasons related with the IT or found unsuitable for the tender etc. Railway and IREPS website will not entertain any claim in this regard or refund the paid amount.

1.10 All documents uploaded or information furnished in the website are digitally signed by the competent authority.

1.11 This tender document includes many chapters/items/Conditions/Instructions like as Undertakings, Technical Compliance, Commercial compliance, standard Technical Criteria, Standard Financial Criteria, Similar Nature of Work, General Instructions to Tenderers for e-tendering, Special Conditions of Contract-General and list documents to be uploaded and deposited, Notice Inviting Tender (NIT), Tender Form, Special Condition of Work are available in the IREPS portal and all the items including all other documents referred to herein, if not scored off, shall constitute integral part of this tender document and shall be read and acted upon together. No part of this tender document shall be read, relied and/or acted upon in isolation.

2.0 *Books of reference:* Tenderer should purchase a copy of the following books of Engineering department of the Eastern Railway from the office of the Principal Chief Engineer, Eastern Railway, 17, N. S. Road, Kolkata- 700 001 on payment of prescribed cost and should go through them:

1. Indian Railways Standard General Conditions of Contract updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.
2. **Standard Schedule of Rates (SSOR) shall mean the schedule of Rates adopted by the Railway, which includes:**
  - a) **“Unified Standard Schedule of Rates of the Railway (USSOR)” i.e. the Standard Schedule of Rates of the Railway issued under the authority of the Chief Engineer from time to time, updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents;**
  - b) **“Delhi Schedule Of Rates (DSR)” i.e. the Standard Schedule of Rates published by Director General/ Central Public Works Department, Government of India, New Delhi, as**

adopted and modified by the Railway under the authority of the Chief Engineer from time to time, updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.

3. The Indian Railways Unified Standard Specification (Works & Materials) Vol. I & II, 2010 edition with all correction slips issued time to time and up-to-date, hereinafter referred to as '**IRUSS-2019**' with correction slip issued up-to-date, for the purpose of specifications of works and materials along with '**GCC-2022**' for such materials which are not covered under IRUSS-2010,
4. **The General Conditions of Contract, 2022** edition with all correction slips issued time to time and up-to-date, hereinafter referred to as '**GCC-2020**' for the purpose of general condition of contract .
5. **CPWD Specifications 2019 Vol I & II updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.**
6. **Indian Railways Unified Standard Specification (IRUSS-2019) updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.**
7. **IR Specifications/Guidelines updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.**
8. **Relevant B.I.S. Codes updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.**
9. **The Unified Standard Schedule of Rates (Labour & Materials) of 2011 edition with all correction slips issued time to time, hereinafter referred to as 'USSOR-2011 & Eastern Railway L&M Schedule 1987 (as amended by up-to-date correction slip)' for specifications and rates.**
10. **Indian Railways Unified Standard Specifications (Works and Material) 2010 updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.**
11. **These books are where-in-after called the "Books of reference" and shall governs this tender as well as the contract resulting from the acceptance from this tender, to the extent that their contents do not conflict with the contents of the various chapters of these documents.**

2.1 *Contractor:* Tenderer, whose tender is accepted by the Railway, shall thereafter be referred to as 'contractor' and shall mean the person/firm/co-operative society or company, whether incorporated or not, who enters into contract with the Railway and shall include his executor, administrator, successor and permitted assignee. This tender document of the successful tenderer shall form part of contract agreement between the contractor and the Railway after acceptance thereof by the Railway.

2.2 Singular and Plural: Words importing singular number shall also include plural and vice versa where the context requires in this tender document and vice versa.

### **3.0 TENDERER'S POSTAL ADDRESS**

3.1 *Address of tenderer:* The address, email Id and Mobile phone, other phone nos. and other details given in the portal while registering will be considered as official address and all correspondences to the tenderer will be made in these registered mode

of communications.

All communication sent in time to the tenderer by post at the said address shall be deemed to have reached the tenderer duly and in time. Important documents shall be sent by Registered Post. However, an undertaking has to be given in the enclosed annexure by uploading a scanned copy of duly filled in form in the portal.

3.2 *Change of address:* Tenderer shall keep the Railway informed of changes in the postal address at all times in his own interest.

#### **4.0 Tender Form:**

Tender Forms shall embody the contents of the contract documents either directly or by reference and shall be as per specimen form, Annexure-I (as per GCC-2022) e-Tender Forms shall be issued free of cost to all tenderers.

#### **5.0 INCONSISTENCY BETWEEN THE DOCUMENTS**

**Order of Precedence of Documents:** In a tender/contract, in case of any difference, contradiction, discrepancy, with regard to conditions of tender/contract, specifications, drawings, bill of quantities etc., forming part of the tender/contract, the following shall be the order of precedence:

- i. Letter of Award
- ii. Bill(s) of Quantities
- iii. Schedule of Items, Rates & Quantities
- iv. Special Conditions of Contract
- v. Technical Specifications as given in tender documents
- vi. Drawings
- vii. Indian Railways Standard General Conditions of Contract updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.
- viii. CPWD Specifications 2019 Vol I & II updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.
- ix. Indian Railways Unified Standard Specification (IRUSS-2019) updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.
- x. Indian Railways Unified Standard Specifications (Works and Material) 2010 updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.
- xi. IR Specifications/Guidelines updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.

- xii. **Relevant B.I.S. Codes updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.**

## **6.0 SCOPE OF THE TENDER**

E-Tenders have been invited for and on behalf of the President of India for the work, scope of which has been described in the Notice inviting Tender (NIT) and Schedule of work in the website of IREPS. Above scope of the work is indicative only. The tenderer is advised to visit the site of the work and acquaint himself with the site conditions, expected scope and quantum of works involved in his own interest.

## **7.0 COST OF THE WORK**

The cost of work has been detailed in the NIT (Notice Inviting Tender) available online in the website only. Such cost is approximate and is meant only for the guidance of the tenderer.

## **8.0 THE SCHEDULE OF WORKS**

The Schedules of Works is also available separately in the website online and Rates are to be quoted online and submitted online duly signed digitally.

## **9.0 INSPECTION OF DATA**

Drawings for the work can be seen in the office inviting this tender on any working day during working hours. The drawings are only for the guidance of tenderers. Detailed working drawings, if required based on the drawings mentioned above, will be given by the Engineer or his representative from time to time.

## **10.0 INSPECTION OF SITE**

Before submitting tender, tenderer will be deemed to have satisfied himself, by actual inspection of the site and locality of the work, that all conditions liable to be encountered during execution of the work are taken into account and that the rates, he enters in this tender document, are adequate and all inclusive to accord with the provisions in Clause-37 of the GCC-2020 for completion of the works to the entire satisfaction of the Railway.

## **11.0 CARE IN SUBMISSION OF TENDER**

Tender must be submitted online through the website [www.ireps.gov.in](http://www.ireps.gov.in) on and before the time and date specified in NIT for closing. No manual offers shall be received for this tender.

The requisite Bid Security as per NIT should be submitted with the tender in any form as specified in Clause-4 and 23.2 of Chapter-I of Tender Document.

Tenderers can revise their offers for any number of times till date and time of closing.

**(a) (i) 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.**

(a)(ii) Tenderers will examine the various provisions of The Central Goods and Services Tax Act, 2017(CGST)/ Integrated Goods and Services Tax Act, 2017(IGST)/ Union Territory Goods and Services Tax Act, 2017(UTGST)/ respective state's State Goods and Services Tax Act (SGST) also, as notified by Central/State Govt. & as amended from time to time and applicable taxes before bidding. Tenderers will ensure that full benefit of Input Tax Credit (ITC) likely to be availed by them is duly considered while quoting rates.

(a)(iii) The successful tenderer who is liable to be registered under CGST/IGST/UTGST/SGST Act shall submit GSTIN along with other details required under CGST/IGST/UTGST/SGST Act to railway immediately after the award of contract, without which no payment shall be released to the Contractor. The Contractor shall be responsible for deposition of applicable GST to the concerned authority.

(a) (iv) In case the successful tenderer is not liable to be registered under CGST/IGST/UTGST/ SGST Act, the railway shall deduct the applicable GST from his/their bills under reverse charge mechanism (RCM) and deposit the same to the concerned authority.

(b) When work is tendered for by a firm or company, the tender shall be signed by the individual legally authorized to enter into commitments on their behalf.

(c) 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.

The tenderers shall submit a copy of certificate stating that all their statements/documents submitted along with bid are true and factual. Standard format of certificate to be submitted by the bidder is enclosed as Annexure-IX. Non submission of above 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.

#### 12.0 Letter of Credit (LC) as Mode of Payment in Works Tender or Service Tender:

(Authority: Railway Board's letter No.2018/CE-I/CT/9 dated 04.06.2018).

- (i) For all the tenders having advertised cost of Rs.10 lakh or above, the contractor shall have the option to take payment from Railways through a letter of credit (LC) arrangement.
- (ii) This option of taking payment through LC arrangement has to be exercised in IREPS (Indian Railway Electronic Procurement System - the e-application on which tenders are called by Railways) by the tenderer at the time of bidding itself, and the tenderer shall affirm having read over and agreed to the terms and conditions of the LC option.
- (iii) The option so exercised, shall be an integral part of the bidder's offer.

- (iv) The above option of taking payment through LC arrangement, once exercised by tenderer at the time of bidding, shall be final and no change shall be permitted, thereafter, during execution of contract.
- (v) In case tenderer opts for payment through LC, following shall be the procedure to deal release of payment through LC:
- (vi) (a) The LC shall be a sight LC.
- (b) The contractor shall select his Advising/Negotiating bank for LC. The incidental cost towards issue of LC and its operation thereof shall be borne by the contractor.
- (c) SBI, New Delhi, Main Branch will be the nodal branch for issue of LCs based on online requests received from Railway Accounts Units for tenders opened in financial year 2018-19. SBI branches where the respective Railway Accounts Office has its Account (local SBI branch) will be the issuance/reimbursing branch for LC issued under this arrangement. The Bank shall remain same for this tender till completion of contract. The incidental cost @0.15% per annum of LC value, towards issue of LC and operation thereof shall be borne by the contractor and shall be recovered from his bills.
- (d) The LC shall be opened initially for duration of 180 to 365 days in consultation with contractor. The LC shall be extended time to time as per the progress of the contract, on the request of the contractor. The value of LC to be opened initially as well as extended thereafter shall be finalised by the engineer in consultation with the contractor on the basis of expected progress of work.
- (e) The LC terms and conditions shall inter-alia indemnify and save harmless the Railway from and against all losses, claims and demands of every nature and description brought or recovered against the Railways by reason of any act or omission of the contractor, his agents or employees, in relation to the Letter of Credit (LC). All sums payable/borne by Railways on this account shall be considered as reasonable compensation and paid by contractor.
- (f) The LC terms and conditions shall inter-alia provide that Railways will issue a Document of Authorization (format enclosed as Annexure) after passing the bill for completed work, to enable contractor to claim the authorized amount from their bank.
- (g) The acceptable, agreed upon document for payments to be released under the LC shall be the Document of Authorization.
- (h) The Document of Authorization shall be issued by Railway Accounts Office against each bill passed by Railways.
- (i) On issuance of Document of Authorization, a copy of Document of Authorization shall be posted on IREPS for download by the contractor. A digitally signed copy of Document of Authorization shall also be sent by Railway Accounts Office to Railway's bank (Local SBI Branch).
- (j) The contractor shall take print out of the Document of Authorization available on IREPS and present his claim to his bank (advising Bank) for necessary payments as per LC terms and conditions. The claim shall comprise of copy of Document of Authorization, Bill of Exchange and Bill.

- (k) The payment against LC shall be subject to verification from Railway's Bank (Local SBI Branch).
- (l) The contractor's bank (advising bank) shall submit the documents to the Railway's Bank (Local SBI Branch).
- (m) The railway's bank (issuing bank) shall, after verifying the claim so received w.r.t. the digitally signed Document of Authorization received from Railway Accounts Office, release the payment to contractor's bank (advising bank) for crediting the same to contractor's account.
- (n) Any number of bills can be dealt within one L.C, provided the sum total of payments to contractor is within the amount for which LC has been opened.
- (o) The LC shall be closed after the release of final payment including PVC amount, if any, to the contractor.
- (p) The release of performance guarantee or security deposit shall be dealt directly by railway with the contractor i.e., not through LC

### **13.0 OPENING OF TENDER**

Opening of e-tender online: The e-tenders will be opened online using the IREPS portal. No representative is required to be present for opening of tender and taking notes of rates quoted and ranking as the complete details of rates etc. of all the bidders shall be available to the bidders in the website after the opening of the tender.

In case the date of closing mentioned in the Notice Inviting Tender is declared a holiday/bandh/strike on any account, the date of closing tender online will not be changed as the application in the website of IREPS does not permit submission of any offer after closing date and time of the tender.

### **14.0 PERIOD OF VALIDITY OF THE TENDER**

Tenderer shall keep his tender open for a minimum of period of 45 days (in case of 2 packet system of tendering 60 days) from the date of opening of this tender. It shall be understood that, after submitting his tender, the tenderer shall not resile from his offer or modify the terms and conditions there of in a manner not acceptable to the Railway within the above period. The Railway may, however, request the tenderer to extend validity of his offer with aforesaid stipulations enforced. (Authority Railway Board's letter no. 2017/Trans/01/policy dtd.08.02.18).

### **15.0 PERIOD OF COMPLETION OF THE WORK**

The entire work covered by this tender is required to be completed in all respects within the period of completion stipulated in Notice inviting Tender (NIT) in website and in this tender document and the period shall be reckoned from the date of issue of the letter of acceptance. Tenderer shall submit his tender subject to acceptance of this condition and with undertaking to do so, if the work is awarded to him.



## **16.0 SPECIFICATIONS OF THE WORK**

The work shall be carried out as per specifications contained in the IRUSS-2010 and USSOR- 2011, CPWD Specifications 2019 Vol I & II updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract, Indian Railways Unified Standard Specification (IRUSS-2019) updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract and in tender schedule and tender document or otherwise referred to herein. For more information refer clause No.10 of Chapter-II of tender document.

### **17.1 ELIGIBILITY CRITERIA (FOR TENDERS OF VALUE ABOVE RS. 50 LAKHS) :**

Technical Eligibility Criteria:

(a) The tenderer must have successfully completed or substantially completed any of the following during last 07 (seven) years, ending last day of month previous to the one in which tender is invited:

Three similar works each costing not less than the amount equal to 30% of advertised value of the tender, or

Two similar works each costing not less than the amount equal to 40% of advertised value of the tender, or

One similar work each costing not less than the amount equal to 60% of advertised value of the tender.

(b) (i) In case of tenders for composite works (e.g. works involving more than one distinct component, such as Civil Engineering works, S&T works, Electrical works, OHE works etc. and in the case of major bridges – substructure, superstructure etc.), tenderer must have successfully completed or substantially completed any of the following during last 07 (seven) years, ending last day of month previous to the one in which tender is invited:

Three similar works each costing not less than the amount equal to 30% of advertised value of each component of tender, or

Two similar works each costing not less than the amount equal to 40% of advertised value of each component of tender, or

One similar work each costing not less than the amount equal to 60% of advertised value of each component of tender.

**Note for (b) (i):** Separate completed works of minimum required values shall also be considered for fulfillment of technical eligibility criteria for different components

(b) (ii) In such cases, what constitutes a component in a composite work shall be clearly pre-defined with estimated tender cost of it, as part of the tender documents without any ambiguity.

(b) (iii) To evaluate the technical eligibility of tenderer, only components of work as stipulated in tender documents for evaluation of technical eligibility, shall be considered. The scope of work covered in other remaining components shall be either executed by tenderer himself if he has work experience as mentioned in clause 7 the Standard General Conditions of Contract or through subcontractor

fulfilling the requirements as per clause 7 of the **Standard General Conditions of Contract** or jointly i.e., partly himself and remaining through subcontractor, with prior approval of Chief Engineer in writing.

However, if required in tender documents by way of Special Conditions, a formal agreement duly notarised, legally enforceable in the court of law, shall be executed by the main contractor with the subcontractor for the component(s) of work proposed to be executed by the subcontractor(s), and shall be submitted along with the offer for considering subletting of that scope of work towards fulfillment of technical eligibility. Such subcontractor must fulfill technical eligibility criteria as follows:

The subcontractor shall have successfully completed at least one work similar to work proposed for subcontract, costing not less than 35% value of work to be subletted, in last 5 years, ending last day of month previous to the one in which tender is invited through a works contract.

Note: for subletting of work costing up to Rs 50 lakh, no previous work experience of subcontractor shall be asked for by the Railway.

In case after award of contract or during execution of work it becomes necessary for contractor to change subcontractor, the same shall be done with subcontractor(s) fulfilling the requirements as per clause 7 of the **Standard General Conditions of Contract**. with prior approval of Chief Engineer in writing.

#### **Note for Item 17.1:**

Work experience certificate from private individual shall not be considered. However, in addition to work experience certificates issued by any Govt. Organisation, work experience certificate issued by Public listed company having average annual turnover of Rs 500 crore and above in last 3 financial years excluding the current financial year, listed on National Stock Exchange or Bombay Stock Exchange, incorporated/registered at least 5 years prior to the date of **closing** of tender, shall also be considered provided the work experience certificate has been issued by a person authorized by the Public listed company to issue such certificates.

In case tenderer submits work experience certificate issued by public listed company, the tenderer shall also submit along with work experience certificate, the relevant copy of work order, bill of quantities, bill wise details of payment received duly certified by Chartered Accountant, TDS certificates for all payments received and copy of final/last bill paid by company in support of above work experience certificate.

#### **17.2. Financial Eligibility Criteria:**

Advance Correction Slip No. 1) Ref: 2022/ce-i/ct/gcc-2022/policy dated- 14.07.2022)

A. Para 10.2., Part I of GCC shall be read as under:

The tenderer must have minimum average annual contractual turnover of  $V/N$  or 'V' whichever is less; where V= Advertised value of the tender in crores of Rupees

N= Number of years prescribed for completion of work for which bids have been invited.

The average annual contractual turnover shall be calculated as an average of "total contractual payments" in the previous three financial years, as per the audited balance sheet. However, in case balance sheet of the previous year is yet to be prepared/ audited, the audited balance sheet of the fourth previous year shall be considered for calculating average annual contractual turnover under:

The tenderers shall submit requisite information as per Annexure-XII (as per tender document & NIT), along with copies of Audited Balance Sheets duly certified by the Chartered Accountant/ Certificate from Chartered Accountant duly supported by Audited Balance Sheet.

- 17.3 Bid Capacity:** The tender/technical bid will be evaluated based on bid capacity formula as per Annexure-XII(as per tender document and NIT).
- 17.4** No Technical and Financial credentials are required for tenders having **advertised** value up to Rs 50 lakh.
- 17.5** Credentials if submitted in foreign currency shall be converted into Indian currency i.e., Indian Rupee as under:

The conversion rate of US Dollars into Rupees shall be the daily representative exchange rates published by the Reserve Bank of India **or entity authorized by RBI to do so** for the relevant date **or immediately previous date for which rates have been published**. Where, relevant date shall be as on the last day of month previous to the one in which tender is invited. In case of any other currency, the same shall first be converted to US Dollars as on the last day of month previous to the one in which tender is invited, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date **or immediately previous date for which rates have been published**.

[Explanation for Para 10 of the Tender Form (Second Sheet) including Para 10.1 to 10.5 - Eligibility Criteria:

- 1. Substantially Completed Work means an ongoing work in which payment equal to or more than 90% of the present contract value (excluding the payment made for adjustment of Price variation (PVC), if any) has been made to the contractor in that ongoing contract and no proceedings of termination of contract on Contractor's default has been initiated. The credential certificate in this regard should have been issued not prior to 60 days of date of invitation of present tender.*
- 2. In case a work is started prior to 07 (seven) years, ending last day of month previous to the one in which tender is invited, but completed in last 07 (seven) years, ending last day of month previous to the one in which tender is invited, the completed work shall be considered for fulfillment of credentials.*
- 3. If a work is physically completed and completion certificate to this extent is issued by the concerned organization but final bill is pending, such work shall be considered for fulfillment of credentials*
- 4. In case of completed work, the value of final bill (gross amount) including the PVC amount (if paid) shall be considered as the completion cost of work. In case final bill is pending, only the total gross amount already paid including the PVC amount (if paid) shall be considered as the completion cost of work.*

*In case of substantially completed work, the total gross amount already paid including the PVC amount (if paid), as mentioned in the certificate, shall be considered as the cost of substantially completed work.*
- 5. If a bidder has successfully completed a work as subcontractor and the work experience certificate has been issued for such work to the subcontractor by a Govt. Organization or public listed company as defined in Note for Item 10.1 Para 10 of the Tender Form (Second Sheet), the same shall be considered for the purpose of fulfillment of credentials.*
- 6. In case a work is considered similar in nature for fulfillment of technical credentials, the overall cost including the PVC amount (if paid) of that completed*

*work or substantially completed work*, shall be considered and no separate evaluation for each component of that work shall be made to decide eligibility.

7. *In case of newly formed partnership firm, the credentials of individual partners from previous propriety firm(s) or dissolved previous partnership firm(s) or split previous partnership firm(s), shall be considered only to the extent of their share in previous entity on the date of dissolution / split and their share in newly formed partnership firm. For example, a partner A had 30% share in previous entity and his share in present partnership firm is 20%. In the present tender under consideration, the credentials of partner A will be considered to the extent of  $0.3 \times 0.2 \times \text{value of the work done in the previous entity}$ . For this purpose, the tenderer shall submit along with his bid all the relevant documents which include copy of previous partnership deed(s), dissolution deed(s) and proof of surrender of PAN No.(s) in case of dissolution of partnership firm(s) etc.*
8. *In case of existing partnership firm, if any one or more partners quit the partnership firm, the credentials of remaining partnership firm shall be re-worked out i.e., the quitting partner(s) shall take away his credentials to the extent of his share on the date of quitting the partnership firm (e.g. in a partnership firm of partners A, B & C having share 30%, 30% & 40% respectively and credentials of Rs 10 crore; in case partner C quits the firm, the credentials of this partnership firm shall remain as Rs 6 crore). For this purpose, the tenderer shall submit along with his bid all the relevant documents which include copy of previous partnership deed(s), dissolution deed(s) and proof of surrender of PAN No.(s) in case of dissolution of partnership firm(s) etc.*
9. *In case of existing partnership firm if any **new** partner(s) joins the firm **without any modification in the name and PAN/TAN no. of the firm**, the credentials of partnership firm shall get enhanced to the extent of credentials of newly added partner(s) on the same principles as mentioned in item 6 above. For this purpose, the tenderer shall submit along with his bid all the relevant documents which include copy of previous partnership deeds, dissolution/splitting deeds and proof of surrender of PAN No.(s) in case of dissolution of partnership firm etc.*
10. *Any partner in a partnership firm cannot use or claim his credentials in any other firm without leaving the partnership firm i.e., In a partnership firm of A&B partners, A or B partner cannot use credentials of partnership firm of A&B partners in any other partnership firm or propriety firm without leaving partnership firm of A&B partners.*
11. *In case a partner in a partnership firm is replaced due to succession as per succession law, the proportion of credentials of the previous partner will be passed on to the successor.*
12. *If the percentage share among partners of a partnership firm is changed, but the partners remain the same, the credentials of the firm before such modification in the share will continue to be considered for the firm as it is without any change in their value. Further, in case a partner of partnership firm retires without taking away any credentials from the firm, the credentials of partnership firm shall remain the same as it is without any change in their value.*
13. *In a partnership firm "AB" of A&B partners, in case A also works as propriety firm "P" or partner in some other partnership firm "AX", credentials of A in propriety firm "P" or in other partnership firm "AX" earned after the date of becoming a partner of the firm AB shall not be added in partnership firm AB.*
14. *In case a tenderer is LLP, the credentials of tenderer shall be worked out on above lines similar to a partnership firm.*

15. *In case company A is merged with company B, then company B would get the credentials of company A also.]*

### **18.0 Tenderer Credentials:**

Documents testifying tenderer previous experience and financial status should be produced alongwith the tender.

Tenderer(s) who is / are not borne on the approved list of the Contractors of \_\_\_\_\_Railway shallsubmit along with his / their 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.
- (i) Audited Balance Sheet duly certified by the Chartered Accountant regarding contractual payments received in the past. 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.
- (ii) A copy of certificate stating that they are not liable to be disqualified and all their statements/documents submitted along with bid are true and factual. Standard format of the certificate to be submitted by the bidder is enclosed as Annexure-IX. Non submission of a copy of 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 are/is qualifying the Qualifying Criteria mentioned in the Tender Document.
- (iii) 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.
- (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 five 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 five years.

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

- 20.0 **Execution of Contract Documents:** The successful Tenderer(s) shall be required to execute an agreement with the President of India acting through the \_\_\_\_\_, \_\_\_\_\_ Railway for carrying out the work according to the Standard General Conditions of

Contract, Special Conditions / Specifications annexed to the tender and Standard Specifications (Works and Materials) of Railway as amended/corrected upto latest correction slips, mentioned in tender form (First Sheet).

## 21.0 Documents to be Submitted Along with Tender

- (i) 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.
- (ii) Following documents shall be submitted by the tenderer:
  - (a) Sole Proprietorship Firm:
    - (i) All documents in terms of **Para 10 of the Tender Form (Second Sheet)** above.
  - (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 **Para 10 of the Tender Form (Second Sheet)** above.
  - (c) Partnership Firm:
    - (i) **All** documents as mentioned in **para 18** of the Tender Form (Second Sheet).
  - (d) **Joint Venture (JV): All** documents as mentioned in **para 17** of the Tender Form (Second Sheet).
  - (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 **Para 10 of the Tender Form (Second Sheet)** above.
  - (f) LLP (Limited Liability Partnership):
    - (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 Para 10 of the Tender Form (Second Sheet).

(g) Registered Society & Registered Trust:

(i) A copy of 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 Para 10 of the Tender Form (Second Sheet) above.

(iii) 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.

(iv) 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.

(v) A tender from JV shall be considered only where permissible as per the tender conditions.

(vi) 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.

22.0 The tenderer whether sole proprietor / a company or a partnership firm / joint venture (JV) / 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 Power 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 Apostille certificate.*

### **23.0 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 16.a), b), c) above has not been furnished, contract is liable to be dealt in accordance with provision of clause 62 of the Standard General Condition of contract.

#### **24.0 JOINT VENTURE (JV) IN WORKS TENDERS**

Participation of Joint Venture (JV) in Works Tender: This Clause shall be applicable for works tender if tender value is more than Rs. 10.00 Crore.

**24.1 Participation of Joint Venture (JV) in Works Tender:** This para shall be applicable for works tenders wherein tender documents provide for the same.  
Separate identity/name shall be given to the Joint Venture.

24.2 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%.

24.3 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.

24.4 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.

24.5 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.

24.6 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.

24.7 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, the full Bid Security shall be liable to be forfeited.

24.8 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.

- 24.9 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.
- 24.10 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.
- 24.11 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 alongwith 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, following Clauses:
- 24.11.1 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.
- 24.11.2 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.
- 24.11.3 Governing Laws - The Registered Entity shall in all respect be governed by and interpreted in accordance with Indian Laws.
- 24.12 Authorized Member - Joint Venture members in the JV MoU shall authorize **Lead** member on behalf of the Joint Venture to deal with the tender, 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.

24.13 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.

24.14 Documents to be enclosed by the JV alongwith the tender:

24.14.1 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 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.**

24.14.2 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.

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

- A copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement.
- The copies of MOA (Memorandum of Association) / AOA (Articles of Association) of the company.
- A copy of Certificate of Incorporation.
- 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.

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

- **A copy of LLP Agreement**

- A copy of Certificate of Incorporation of LLP
- A copy of resolution passed by partners of LLP firm, permitting the Firm to enter into a JV agreement
- A copy of Authorization /copy of Power of Attorney issued by the LLP firm (backedby 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 againstthe LLP.
- An undertaking by all partners of the LLP that they are not blacklisted or debarredby 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 intheir 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.

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

- A copy of Certificate of Registration
- A copy of Memorandum of Association of Society/Trust Deed
- A copy of Rules & Regulations of the Society
- A copy of Power of Attorney, in favour of the individual to sign the tender documentsand create liability against the Society/Trust.

24.14.6 All other documents in terms of Para 10 of the Tender Form (Second Sheet) above.

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

**24.15.1 Technical Eligibility Criteria** ('a' or 'b' mentioned hereunder):  
(Ref: 2022/ce-i/ct/gcc-2022/policy 14.07.2022)

**a) For Works without composite components** The technical eligibility for the work as per para 10.1 above, 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 10.1 above, 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 10.1 above, 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 10.1 above, 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 10.1 above, 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 of 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 for Para 17.15.1 of GCC-2022:**

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.

**24.15.2 Financial Eligibility Criteria**

The JV shall satisfy the requirement of “Financial Eligibility” mentioned at para 10.2 of GCC-2022. The “financial capacity” of the lead member of JV shall not be less than 51% of the financial eligibility criteria mentioned at para 10.2 above.

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.

**24.15.3 Bid Capacity**

The JV shall satisfy the requirement of “Bid Capacity” requirement mentioned at para 10.3 above. The arithmetic sum of individual “Bid capacity” of all the members shall be taken as JV’s “Bid capacity” to satisfy this requirement.

**25.0 Participation of Partnership Firms in works tenders:**

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

25.2 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 as per the Indian Partnership Act, prior to submission of tender.

25.3 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.

25.4 Once the tender has been submitted, the constitution of the firm shall not normally 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 will 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.

25.5 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.

25.6 The tender form shall be submitted only in the name of partnership firm. The **Bid Security** shall be **submitted** by partnership firm. The **Bid Security** submitted in the name of any individual partner or in the name of authorized partner (s) shall not be considered.

**25.7** 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.

**25.8** 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.

**25.9** 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.

(a) 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.

(b) 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.

- (c) Governing laws: The partnership firm agreement shall in all respect be governed by and interpreted in accordance with the Indian laws.
- (d) 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.

**25.10** 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:

- A notarized copy of the Partnership Deed **or a copy of the Partnership deed registered with the Registrar.**
- 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.
- 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.
- All other documents in terms of **Para 10 of the Tender Form (Second Sheet)** above.

**25.11** 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 10 of the Tender Form (Second Sheet)** above.

**Advances to Contractor –**

If specifically provided in Tender Documents of tender having advertised value more than Rs 50 Crores, Railway shall make payment, as an Interest bearing advances, as per Contractor's request. These advances shall carry a simple interest as indicated in the Tender documents. The payment and recovery of such advances shall be made as per manners prescribed in Clause 46.4 of the **Standard** General Conditions of Contract.

(Signature)

(Designation)

Signature of Tenderer(s) \_\_\_\_\_ Railway Date \_\_\_\_\_  
Date \_\_\_\_\_

## **26.0 Submission of Documents in support of Eligibility Criteria :**

(a) All documents in support of fulfillment of eligibility criteria with respect to completion of 'Similar nature of work for Technical Eligibility Criteria ' and 'Total contract value for Financial Eligibility Criteria' should be uploaded online in the website with scanned copy at the time of tender bidding with details shown in the Annexures I, IV. No post tender communication, in any form will be made or entertained, after opening of tenders, in this regard. Railways may however call for the originals of the credentials for verification or any clarifications/confirmations on the contents of the documents submitted. Eligibility of tenderers shall be decided solely on the basis of the documents submitted along with the tender offers and any subsequent document whatsoever submitted in this connection would not be given any cognizance on any account.

(b) System of verification of Tenderer's credentials :

(Authority: Railway Board's letter no.2017/Trans/01/Policy dated 08/02/2018)

The tenderer shall submit along with the Tender Document in support of his/their claim to fulfill the eligibility criteria as mentioned in the tender document. Each page of the copy of documents/ certificates in support of credentials, submitted by the tenderer, shall be self-attested/digitally signed by the tenderer or authorized representative of the tendering firm. Self-attestation shall include signature, stamp and date (on each page). 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.

## **27.0 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) **Certificates which may be an attested Certificate from the client, Audited Balance Sheet duly certified by the Chartered Accountant etc 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 copy of certificate stating that they are not liable to be disqualified and all their statements/documents submitted along with bid are true and factual. Standard format of the certificate to be submitted by the bidder is enclosed as Annexure-IX. Non submission of a copy of certificate by the bidder shall result in summary rejection of his/their bid. It shall be mandatorily incumbent upon the tenderer to identify, state and submit the supporting documents duly self attested by which they/he are/is qualifying the Qualifying Criteria mentioned in the Tender Document.**
- (v) **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 thereunder.**
- (vi) **(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 Deposit besides banning of business for a period of upto five 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 Deposit (EMD), 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 five years.**

## **28.0 TESTIMONIALS**

- a) Experience, financial status and ability: Tenderer is required to upload documents detailed hereunder duly filled in and signed in the website while submitting tenders online for evaluation of his credentials. All these documents are available in website also which may be down loaded on need.
- b) List of completed works: Tenderer is required to submit, along with his e-tender, particulars of all works completed by him for the Railways or for any other client in the last three financial years starting from the original date of opening of this tender in the Performa enclosed as annexure-I to this chapter. Figures of cost shall not include cost of materials supplied free of cost by the client to the contractor. The tender without this information may be treated as if the tenderer has not completed any work. Supportive certificates from the organizations with whom the tenderer worked should be enclosed giving description of work, value of work at the time of award, date of award, scheduled date of completion, date of actual start, actual date of completion final value of contract etc.
- c) List of works in hand: Tenderer is required to submit, along with his tender, particulars of all works in hand for the Railways or for any other client in the Performa enclosed as annexure-IV to this chapter of this tender document. Figures of cost shall not include cost of materials supplied free of cost by the client to the contractor. The tender without this information may be treated as if the tenderer has no works in hand. Supportive documents from the organizations with which the tenderer is workings should be enclosed giving description of work, contract value, date of award, approximate date value of balance work.
- d) Banker's solvency certificate: Tenderer is also required to enclose, along with his tender, Banker's solvency certificate showing financial capabilities of the tenderer. The Railway reserves the right to treat the tenderer as having no financial capability to handle such a work in absence of such certificate.
- e) List of court cases and arbitration cases: Tenderer is also required to submit, along with his tender, list of arbitrations demanded from any clients during the last five years preceding the date of opening of this tender as per annexure-VI to this chapter of this tender document. The tenderer is also required to submit, along with his tender, list of court cases filed against any clients during the last five years preceding the date of opening of this tender as per annexure-VII to this chapter of this tender document.
- f) List of plant and machinery: Tenderer has to make his own arrangements for execution of works. The tenderer is required to submit, along with his tender, list of plant and machinery available on hand (own) and proposed to be inducted (own and hired to be given separately) for the subject work in Performa given in annexure-II to this chapter of this tender document. The tender without this information may be treated as if the tenderer has no plant and machinery available on hand (own) and that no plant and machinery are proposed to be inducted for the subject work.
- g) List of personnel and organization: Tenderer is required to submit, along with his tender,

list of Personnel and organization available on hand (own) and proposed to be engaged for the subject work in Performa given in annexure-III to this chapter of this tender document. The tender without this information may be treated as if the tenderer has no personnel and organization and that no personnel and organization are proposed to be engaged for the subject work.

## **29.0 Bid Security:**

- (1) (a) The tenderer shall be required to submit the Bid Security with the tender for the due performance with the stipulation to keep the offer open till such date as specified in the tender, under the conditions of tender. The Bid Security shall be as under:

Value of the Work	Bid Security
For works estimated to cost up to ₹ 1 crore	2% of the estimated cost of the work
For works estimated to cost more than ₹ 1 crore	₹ 2 lakh plus ½% (half percent) of the excess of the estimated cost of work beyond ₹ 1 crore subject to a maximum of ₹ 1 crore

Note:

- (i) The Bid Security shall be rounded off to the nearest ₹ 100. This Bid Security shall be applicable for all modes of tendering.
  - (ii) Any firm recognized by Department of Industrial Policy and Promotion (DIPP) as 'Startups' shall be exempted from payment of Bid Security detailed above.
  - (iii) Labour Cooperative Societies shall submit only 50% of above Bid Security detailed above.
- (b) It shall be understood that the tender documents have been issued to the tenderer and the tenderer is permitted to tender in consideration of stipulation on his part, that after submitting his tender he will not resile from his offer or modify the terms and conditions thereof in a manner not acceptable to the Engineer. Should the tenderer fail to observe or comply with the said stipulation, the aforesaid amount shall be liable to be forfeited to the Railway.
- (c) If his tender is accepted, this Bid Security mentioned in sub para (a) above will be retained as part security for the due and faithful fulfillment 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 that may happen thereto while in their possession, nor be liable to pay interest thereon.
- (2) The Bid Security shall be deposited either in cash through e-payment gateway or submitted as Bank Guarantee bond from a scheduled commercial bank of India or as mentioned in tender documents. The Bank Guarantee bond shall be as per Annexure- XIII and shall be valid for a period of 90days beyond the bid validity period.
  - (3) In case, submission of Bid Security in the form of Bank Guarantee, following shall be ensured: i. A scanned copy of the Bank Guarantee shall be uploaded on e-Procurement Portal (IREPS) while applying to the tender.
    - i. A scanned copy of the Bank Guarantee shall be uploaded on e-Procurement Portal (IREPS) while applying to the tender.
    - ii. The original Bank Guarantee should be delivered in person to the official nominated as indicated in the tender document within 5 working days of deadline of submission of bids.
    - iii. Non submission of scanned copy of Bank Guarantee with the bid on e-tendering portal (IREPS) and/or non submission of original Bank Guarantee within the specified period shall lead to summary rejection of bid.

- iv. The Tender Security shall remain valid for a period of 90 days beyond the validity period for the Tender.
- v. The details of the BG, physically submitted should match with the details available in the scanned copy and the data entered during bid submission time, failing which the bid will be rejected.
- vi. The Bank Guarantee shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification “Bid for the \*\*\*\*\* Project” and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of the envelope.
- vii. The envelope shall be addressed to the officer and address as mentioned in the tender document.
- viii. If the envelope is not sealed and marked as instructed above, the Railway assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

## 29.2 APPROPRIATION OF **Bid Security** TOWARDS SECURITY DEPOSIT

If a tender is accepted, the amount of **Bid Security** deposited by such tenderer shall be retained as part of security deposit for due and faithful fulfillment of the contract in terms of clause 16 of the GCC and shall form part of the security deposit stipulated in this tender document.

## 29.3 REFUND OF **Bid Security**

- i) Bid Security of unsuccessful tenderers shall, save as herein provided, be returned to them within a reasonable time. No Interest will be paid on the **Bid Security**. Also, the Railway shall not be responsible for any loss or depreciation that may happen thereto while in possession of neither the Railway nor it will be liable to pay interest thereon.
- ii) Bid Security deposited may be returned through NEFT as per the mandate given by the agency through the website.

## 29.4 FORFEITURE OF **Bid Security** It shall be understood that this tender document has been issued/sold online to the tenderer and the tenderer has been permitted to tender online through website [www.irops.gov.in](http://www.irops.gov.in) in consideration of stipulation on his part that, after submitting his tender, he shall not resile from his offer or modify the rates or terms and conditions thereof after online submission or in a manner not acceptable to the Railway. Should the tenderer fail to observe or comply with the foregoing stipulations, full amount of Bid Security shall be forfeited.

Further, if any modification in rates, terms and conditions is made by tenderer, which is not acceptable to the Railway, subsequent to opening and within the period of validity of his tender and the tenderer refuses to accept award of the contract issued without such modifications, full amount of his Bid Security shall be forfeited.

The Bid Security is also liable to be forfeited in cases where any of the statements and or declarations made by tenderer is proved wrong, false or such as to withhold any information relevant for consideration of the tender.

Tenderer, whose tender is accepted, shall be required to appear in person, or if a firm or incorporation, a duly authorized representative shall so appear at the office inviting this tender and execute contract document within seven days after issue of notice that the contract document is ready for execution. Failure to do so shall constitute breach of the agreement affected by acceptance of his tender in which case full amount of the Bid Security accompanying his tender shall stand forfeited without any other rights or remedies.

In the event when tenderer, whose tender is accepted, shall refuse to execute the contract document as herein before provided, the Railway may determine that such tenderer has

abandoned the contract and thereupon his tender and acceptance thereof shall be treated as cancelled and the Railway shall be entitled to forfeit full value of his Bid Security and to recover damages for such default.

In the event when tenderer, whose tender is accepted, fails to commence the work within fifteen days after issue of letter of acceptance, provisions contained in clause 62 of the GCC shall be applicable.

#### 29.5 TENDER WITHOUT Bid Security

Tender not accompanied with prescribed amount of Bid Security in the form as aforesaid shall be summarily rejected at the time of opening of this tender itself.

#### 30.0 FALSE AND OR INCOMPLETE STATEMENTS

If tenderer gives/upload wrong information/credentials/documents in his/their e-tender and thereby create(s) circumstances for acceptance of his/their tender at any stage of tender or at any stage of contract in the event of his tender having been accepted, his tender or contract shall be liable to be cancelled/rescinded in addition to the following:

1. If such issues come to light at tender stage, full amount of his Bid Security shall be forfeited.
2. In cases where such issues come to light at contract stage, the rights available to the Railway under clause-61 & 62 of the GCC-2022 shall be applicable.

#### 31.0 QUOTATIONS OF RATES

Quoting rates for all items of the schedule: Tenderer shall quote his rates online in the tender schedule wherever the portal demanded for quoting the rate. However, quantities of individual items involved in the work are shown in the attached schedule for guidance only and are subject to variation according to requirement of the Railway. The Railway does not guarantee work under each item or each schedule.

Change in quantities and items: The Railway reserves rights to modify any or all items of the schedules including deletion of any of the item. Therefore, tenderer should quote reasonable and workable rate for each of the item. The contractor shall not be entitled for any revision of rates due to such increase/decrease in quantities of items and payment shall be made on the basis of actual quantities executed under various items and at the accepted rates thereof.

Fluctuation in market rates: Rates quoted by tenderer and accepted by the Railway shall hold good till completion of the work and are not subject to fluctuation of any kind, save and except what is admissible under the price variation clause, if provided for in the tender document and applicable in the case.

Rates to include all taxes: Rates quoted by tenderer shall be inclusive of all taxes levied by the central government, state governments, municipal corporations, local bodies or any other authorized bodies.

Rates in Indian Rupee: Rates should be quoted in Indian Rupees only.

#### 32.0 REBATE

If tenderer wishes to give rebate on the rates quoted by him, the same shall be quoted by him on-line in tender schedule in the website. It is to be noted that such rebate, if offered, shall apply on rates for all items of the work and on all schedules of this tender document.

Such a rebate should be totally unconditional.

In case tenderer does not wish to give any rebate, he should quote zero in the specific location of the tender schedule in the website. In case nothing has been quoted by the tenderer during online submission of tender, it shall be treated as 'Zero' by default and accordingly cost of offer and intersee position will be calculated and decided by the system itself.

If tenderer gives any other type of rebate, conditional or otherwise, such a rebate shall not be considered for evaluation of this tender, although the Railway may avail of the same in case this tender is awarded to such tenderer.

### 33.0 PURCHASE PREFERENCE:

For works costing more than Rs 5.00 crore, 10% purchase preference of tender cost over the first lowest valid and eligible tender would be admissible for Central Public Sector Undertaking subject to satisfaction of all other terms and conditions and subject further to the fact that the order to this effect is applicable on the Railway for the time being.

### 34.0 SPECIAL CONDITIONS BY TENDERER

Tenderer is normally not expected to quote any special condition or stipulation of his own rather it is expected to submit his tender in accordance with the conditions and stipulations contained in this tender document. However, if the tenderer wishes to quote any special condition and or stipulation or wishes to intimate the Railway of any matter of importance, he may do so through a letter which should be submitted on line during the submission of the tender as Annexure. Such stipulations and conditions shall be part of the contract agreement in case of acceptance of his tender only to the extent explicitly accepted by the Railway. The Railway, however, reserves rights not to accept any such special condition and stipulation made by the tenderer and may reject such tender as unacceptable without any reference to the tenderer; may ask the tenderer to withdraw any or all such stipulations before accepting his tender and, in the event of his refusal to do so, may not accept his tender.

In cases where tenderer makes special conditions and or stipulations, he shall also indicate, along with such conditions and stipulations, the cost of withdrawal of the same. The Railway reserves the rights either to accept such conditions and stipulations made by such tenderer or to accept the cost thereof at its sole discretion. If such cost is not indicated, it will be construed that the tenderer is not in a position to withdraw these conditions at any cost and his tender may be adjudged accordingly without any reference to the tenderer.

### 35.0 OMISSIONS AND DISCREPANCIES

Should a tenderer find discrepancies in or omissions from the drawings or any of the Tender Forms or should he be in doubt as to their meaning, he should at once notify the authority inviting tenders. The tender inviting authority may, if deemed necessary, clarify the same to all tenderers. It shall be understood that every endeavor has been made to avoid any error which can materially affect the basis of tender and successful tenderer shall take upon himself and provide for the risk of any error which may subsequently be discovered and shall make no subsequent claim on account thereof.

#### 36.0 UNFORTUNATE SITUATION

If tenderer expires after submission of his tender or after acceptance of his tender, the Railway shall deem such tender cancelled. If a partner of a firm expires after submission of the tender or after acceptance of thereof, the Railway shall deem such tender as cancelled unless the firm retains its character.

#### 37.0 MAINTENANCE PERIOD OF THE WORK

The work shall be maintained for a period specified in the relevant special condition beyond the date of completion.

#### 38.0 LATE TENDER AND DELAYED TENDER

The Application in the website of IREPS does not permit submission of any offer after closing date and time of the e-tender. Hence there is no scope any late or delayed offer in the online bidding process. There shall not be any Late or delayed tender as tenders are to be submitted online within the stipulated date and time.

#### 39.0 CLARIFICATIONS ON THE TENDER SUBMITTED

To assist in examination, evaluation and comparison of tenders, the Railway or its authorised person may ask the tenderers for clarification, if any, required for such examination, evaluation and or comparison. However, request for such clarification and response, thereof, shall be in writing.

#### 40.0 NEGOTIATION

The Railway reserves the rights to enter into negotiations with one, more or all tenderers, at its sole discretion, before acceptance of any particular tender in order to clarify special conditions for reduction of rates and/or for changes in scope of the work etc.

Should such a negotiations with a tenderer be entered into, the tenderer shall not be permitted to increase the quoted rates under any circumstances, even if it includes withdrawal and/or modification of such special conditions as are given by the tenderer along with his original tender.

#### 41.0 COUNTER OFFERS

In cases where the overall value of L-1 is not unreasonably high but the rate(s) for certain item(s) in a schedule or the total value for a schedule happens to be higher than those quoted by other tenderers in the same tender or higher than the last accepted rates, the method of counter offering the lower rate(s) obtained in the same tender or if all these are higher, any other rate(s) considered reasonable by tender committee may be adopted while finalizing the tender.

#### 42.0 ACCEPTANCE OF TENDER

The authority for acceptance of this tender will rest with the Railway. It shall not be obligatory on the said authority to accept the lowest or any other tender. The Railway reserves the right to cancel the tender, accept a tender in whole or in part or reject any tender or all tenders. No tenderer shall demand any explanation for such cause of rejection of his tender nor does the Railway undertake to assign reasons for declining to consider or reject any particular tender.

The Railway reserves the rights to split the work without any reference to tenderer and may divide this tender to more than one tenderer, if deemed necessary.

#### 43.0 MULTIPLE L-1

In case of more than one L-1 bidders, tender may be awarded to tenderer having higher Bid capacity. In case Bid Capacity is also the same, tenderer having done more value of similar work in last three previous financial years and the current financial year upto the date of closing of the tender, may be selected for the award. Instructions with respect to Bid Capacity will follow. (Rly. Bd's letter no.2017/Trans/01/policy dtd. 08.02.2018).

#### 44.0 LETTER OF ACCEPTANCE

Acceptance of this tender shall be communicated to the successful tenderer, whose tender would be accepted by the Railway, by Registered Post at the address given by him in his e-tender in the website. The letter of acceptance shall remain operative till a formal contract agreement is executed and signed between the contractor and the Railway after which the said letter of acceptance shall merge into the aforesaid formal agreement.

The Railway shall not intimate result of this tender to such tenderer whose tender would not be accepted. However, the Railway shall refund the Bid Security to such tenderer as early as possible, where such a refund is required to be made as detailed here in above.

45.0 Communications to be in Writing: All notices, communications, reference and complaints made by the Railway or the Engineer or the Engineer's Representative or the Contractor inter-se concerning the works shall be in writing or e-mail on registered e-mail IDs and no notice, communication, reference or complaint not in writing or through e-mail, shall be recognized. Vide PCE/E.Rly's letter No. W(2)623/0/3 Pt.III(Loose), dt. 03.10.2019 in connection with Special Condition in Works Contract Agreement as follows:

- (a) The provision of Clause 63 & 64 of the General Conditions of Contract will be applicable only for settlement of claims/disputes, for values less than or equal to 20% of the original value (excluding the cost of materials supplied free by Railway) of the contract or 20% of the actual value of the work done (excluding the value of the work rejected) under the contract whichever is less. When claims/disputes are of value more than 20% of the value of the original contract or 20% of the value of the actual work done under the contract, whichever is less, the contractor will not be entitled to seek such disputes/claims for reference to arbitration and the provisions of Clause No. 63 & 64 of the General Conditions of Contract will not be applicable for referring the disputes to be settled through arbitration.
- (b) The Contractor shall furnish his monthly statement of claims as per Clause 43(1) of IRS GCC during the progress of work and not after completion of the work. All such claims and disputes shall be settled promptly during the progress of the work. Chief Engineer/ADRM shall be the final authority for decision on claims and disputes preferred by the contractor. But, the contractor should seek reference to arbitration to settle the disputes only once, subject to the condition as mentioned in the above Para.
- (c) These Special conditions shall prevail over the existing Clause 63 & 64 of General Conditions of Contract.

This is related to Dispute & Claim arises from the contract.

-----E N D-----

**Eastern Railway  
Office of the Division Railway Manager  
Howrah - 711101**

**INSTRUCTIONS TO TENDERERS For e-Tenders  
SPECIAL CONDITIONS OF CONTRACT-GENERAL**

**1.0 GENERAL**

Books of reference: Tenderer should purchase a copy of the following books of Engineering department of the Eastern Railway from the office of the Principal Chief Engineer, Eastern Railway, 17, N. S. Road, Kolkata- 700 001 on payment of prescribed cost and should go through them:

1. Indian Railways Standard General Conditions of Contract updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.
2. **Standard Schedule of Rates (SSOR) shall mean the schedule of Rates adopted by the Railway, which includes:**
  - c) “Unified Standard Schedule of Rates of the Railway (USSOR)” i.e. the Standard Schedule of Rates of the Railway issued under the authority of the Chief Engineer from time to time, updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents;
  - d) “Delhi Schedule Of Rates (DSR)” i.e. the Standard Schedule of Rates published by Director General/ Central Public Works Department, Government of India, New Delhi, as adopted and modified by the Railway under the authority of the Chief Engineer from time to time, updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.
3. The Indian Railways Unified Standard Specification (Works & Materials) Vol. I & II, 2010 edition with all correction slips issued time to time and up-to-date, hereinafter referred to as ‘**IRUSS-2019**’ with correction slip issued up-to-date, for the purpose of specifications of works and materials along with ‘**GCC-2022**’ for such materials which are not covered under IRUSS-2010,
4. **The General Conditions of Contract, 2022** edition with all correction slips issued time to time and up-to-date, hereinafter referred to as ‘**GCC-2020**’ for the purpose of general condition of contract .
5. **CPWD Specifications 2019 Vol I & II updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.**
6. **Indian Railways Unified Standard Specification (IRUSS-2019) updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.**
7. **IR Specifications/Guidelines updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.**
8. **Relevant B.I.S. Codes updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents.**
9. **The Unified Standard Schedule of Rates (Labour & Materials) of 2011 edition**



with all correction slips issued time to time, hereinafter referred to as ‘USSOR-2011 & Eastern Railway L&M Schedule 1987 (as amended by up-to-date correction slip)’ for specifications and rates.

10. Indian Railways Unified Standard Specifications (Works and Material) 2010 updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.
11. These books are where-in-after called the “Books of reference” and shall governs this tender as well as the contract resulting from the acceptance from this tender, to the extent that their contents do not conflict with the contents of the various chapters of these documents.

a. 2.1 *Contractor*: Tenderer, whose tender is accepted by the Railway, shall thereafter be referred to as ‘contractor’ and shall mean the person/firm/co-operative society or company, whether incorporated or not, who enters into contract with the Railway and shall include his executor, administrator, successor and permitted assignee. This tender document of the successful tenderer shall form part of contract agreement between the contractor and the Railway after acceptance thereof by the Railway.

b. 2.3 *Singular and Plural*: Words importing singular number shall also include plural and vice versa where the context requires in this tender document and vice versa.

Inconsistency in this tender document: All the aforesaid books of reference’ shall be read with all up-to-date correction slips issued thereto from time to time. These books of reference shall govern the contract and shall form integral part thereof subject to modification, addition or suppression by special conditions of contract and/or special specifications of the work as contained in this tender document. However, in case of any inconsistency and contradictions between the books of reference and the special conditions and specifications, the special conditions and specifications shall prevail. It must be noted that English version of this entire document will prevail.

All books, specifications, references and codes referred to hereinafter shall mean latest edition thereof incorporating all up-to-date correction slips and amendments issued thereto.

This tender complies with Public Procurement Policy Order 2017 Dtd. 15/06/2017.(If applicable).

(Authority- Railway Board ’s Letter No. 2015/RS(G)/779/5 Dated 16/03/2018)

## 2.0 PLYING OF ROAD VEHICLES NEAR RUNNING RAILWAY LINE

The contractor shall not allow any road vehicle belonging to him or to his agents to ply in Railway land next to running railway line. If for execution of certain works, such as earthwork, supply of ballast etc, it becomes necessary to use road vehicles in railway land next to the running railway line, the contractor shall apply to the engineer-in-charge for giving permission for such type of work with individual vehicles number, names and license particulars of the drivers, locations of works, duration and timings for such movement etc. The engineer-in-charge or his authorized representative will personally counsel, examine and certify all such road vehicles drivers, contractor’s flagmen and supervisor, and will give written permission with name of road vehicles, their drivers, contractor’s flagmen and supervisors etc to be deployed on the work along with location,

period and timing of the work. This permission will be subject to obligatory conditions detailed hereunder in subsequent sub-Para:

The nominated vehicles and their drivers will only be utilized for the work and only in presence of at least one of the flagman and one of the supervisor certified for such work as above.

The vehicles shall ply at least 6.0 m clear of track. Any movement or work at less than 6.0 m and up to minimum 3.5 m clear off track centre shall be done only in presence of railway employee authorized by the engineer-in-charge. No part of the road vehicles will be allowed at a distance at less than 3.5 m from track centre. Cost of such railway employee shall be borne by the Railway.

The contractor will remain fully responsible for ensuring safety and, in case of any accident, shall bear cost of all damages to his equipment and men and also all damages to the Railway and its passengers. The Engineer-in-charge may impose any other conditions necessary for a particular work site.

The road vehicles can ply along the railway line after suitably cordoning off the railway line at a minimum distance of 6.0 m from the centre of the nearest railway line. For plying of the road vehicles during night hours, adequate measures shall be prescribed in writing by the engineer-in-charge along with a site sketch and the same should be communicated to the contractor, contractor's representative, supervisor-in-charge of the work and of the section.

### 3.0 PREVENTION OF ACCIDENTS

The contractor will be responsible for the safety of his workmen and will provide them with necessary standard wear and apparel consistent with the nature of work being executed by his workmen.

The contractor will ensure safety of his workmen by posting necessary flagmen, whose job will be to caution the workmen of approaching trains, when his workmen work on or near running railway line. Similar action would be taken, while working on or near road in use.

The contractor shall protect the site of the work, excavated areas etc by adequate fencing and or other suitable means to prevent accidents of his own workmen, the railway men or any member of the public.

Should any accident take place, total cost of damage including the cost of treatment, loss and or compensation to all affected person/organization and to the Railway will be payable by the contractor. In case the Railway, under any circumstances or law of the country, pays such damage, the same will be fully recovered from the contractor dues.

### 4.0 ENGAGEMENT OF ENGINEERING GRADUATES AND DIPLOMA HOLDERS

In addition to the technical staff, which the contractor may already be having, the contractor will be required to employ immediately on commencement of the work, fresh unemployed Civil Engineering Graduates/Diploma Holders having no experience, based on the value of contract as specified below for full duration of the contract [ Authority: Railway Board's letter no. 2012/CE-I/CT/O/20, dated 10.5.2013]:

SN	Contract Value	No. of Engineering Degree Holders or Diploma Holder to be employed	Duration
a	Rs. 200 lakh and above	One Qualified Graduate Engineer	Till Completion of the work
b	More than Rs. 25 Lakhs but less than Rs. 200 Lakh	One Qualified Diploma holder Engineer	Till Completion of the work

In case the contractor fails to employ the qualified Engineer as aforesaid in para 4.1 above, he in terms of provision of the clause will be liable to pay an amount Rupees Forty Thousand and Rupees Twenty Five Thousand for each month or part thereof for the default period for the provision as contained in para 4.1a and 4.1 b above respectively.

### **5.0 Environmental and Forest clearances:**

The Railway represents and warrants that the environmental and forest clearances pertaining to the work commensurate with the progress of work/agreed programme, will be obtained by Engineer. In the event of any delay in securing respective clearances leading to delay in execution of work, the Contractor shall be entitled to Extension of Time for the period of such delay in accordance with the provisions of Clause-17A(ii).

### **6.0 Security Deposit:**

**Security Deposit:** The Security Deposit shall be 5% of the contract value. The Bid Security submitted by the Contractor with his tender will be retained/ encashed by the Railways as part of security for the due and faithful fulfillment of the contract by the Contractor. Provided further that, if Contractor submits the Cash or Term Deposit Receipt issued from a Scheduled commercial bank of India or irrevocable Bank Guarantee Bond from a Scheduled commercial bank of India, either towards the Full Security Depositor the Part Security Deposit equal to or more than Bid Security, the Railway shall return the Bid Security, to the Contractor.

Balance of Security Deposit may be deposited by the Contractor in cash or Term Deposit Receipt issued from Scheduled commercial bank of India or irrevocable Bank Guarantee bond issued from Scheduled commercial bank of India, or may be recovered at the rate of 6% of the bill amount till the full Security Deposit is recovered. Provided also that in case of defaulting Contractor, the Railway may retain any amount due for payment to the Contractor on the pending "on account bills" so that the amounts so retained (including amount guaranteed through Performance Guarantee) may not exceed 10% of the total value of the contract.

The Irrevocable Bank Guarantee submitted towards Security deposit shall be initially valid up to the stipulated date of Maintenance period plus 60 days and shall be extended from time to time, depending upon extension of contract granted in terms of Clause 17A and 17B of the Standard General Conditions of Contract.

Note: Security Deposit deposited in cash by the Contractor or recovered from the running bills of a Contractor or submitted by contractor as Term Deposit Receipt(s) can be refunded/returned to the contractor, in lieu of irrevocable Bank Guarantee bond issued from scheduled commercial bank of India, to be submitted by him, for an amount equal to or more than the already available Security Deposit, provided however that, in a contract of value less than Rs. 50 Crore, such refund/ return of the already available Security Deposit is permitted up to two times and in a contract of value equal to or more than Rs. 50 Crore, such refund / return of the already available Security Deposit is permitted up to three times.

**6.1 Refund of Security Deposit:** Security Deposit mentioned in sub clause (1) above shall be returned to the Contractor along with or after, the following:

- (a) Final Payment of the Contract as per clause 51.(1) **and**
- (b) Execution of Final Supplementary Agreement or Certification by Engineer that Railway has NoClaim on Contractor **and**
- (c) Maintenance Certificate issued, on expiry of the maintenance period as per clause 50.(1), in case applicable.

**6.2 (ii) Forfeiture of Security Deposit:** Whenever the contract is rescinded as a whole under clause 62 (1) of **these conditions**, the Security Deposit already with railways under the contract shall be forfeited. However, in case the contract is rescinded in part or parts under clause 62 (1) of **these conditions**, the Security Deposit shall not be forfeited.

**6.3** No interest shall be payable upon the **Bid Security** and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of Sub-Clause 16.(4)(b) of this clause will be payable with interest accrued thereon.

**6.4 NEFT MANDATE FORM.** All Payments to the agency (including the refund of the Earnest Money of the unsuccessful bidder preferably) will be remitted through NEFT. The Tenderer is required to submit Bank details and A/C No. etc. in Annexure-VIII.

## **7.0 Performance Guarantee**

The procedure for obtaining Performance Guarantee is outlined below:

- (a) The successful bidder shall have to submit a Performance Guarantee (PG) within 21 (Twenty one) days from the date of issue of Letter of Acceptance (LOA). Extension of time for submission of PG beyond 21 (Twenty one) days and upto 60 days from the date of issue of LOA may be given by the Authority who is competent to sign the contract agreement. However, a penal interest of 12% per annum shall be charged for the delay beyond 21(Twenty one) days, i.e. from 22<sup>nd</sup> day after the date of issue of LOA. Further, if the 60<sup>th</sup> day happens to be a declared holiday in the concerned office of the Railway, submission of PG can be accepted on the next working day.

In all other cases, if the Contractor fails to submit the requisite PG even after 60 days from the date of issue of LOA, the contract is liable to be terminated. In case contract is terminated railway shall be entitled to forfeit **Bid Security** and other dues payable to the contractor against that particular contract, subject to maximum of PG amount. In case a tenderer has not submitted **Bid Security** on the strength of their registration as a Startup recognized by Department of Industrial Policy and Promotion (DIPP) under Ministry of Commerce and Industry, DIPP shall be informed to this effect.

The failed Contractor shall be debarred from participating in re-tender for that work.

- (b) The successful bidder shall submit the Performance Guarantee (PG) in any of the following forms, amounting to 5% of the **original** contract value:-
  - (i) A deposit of Cash;
  - (ii) Irrevocable Bank Guarantee;
  - (iii) Government Securities including State Loan Bonds at 5% below the market value;
  - (iv) **Pay Orders and Demand Drafts tendered by any Scheduled Commercial Bank of India;**
  - (v) Guarantee Bonds executed or Deposits Receipts tendered by any **Scheduled Commercial**

**Bank of India;**

- (vi) Deposit in the Post Office Saving Bank;
  - (vii) Deposit in the National Savings Certificates;
  - (viii) Twelve years National Defence Certificates;
  - (ix) Ten years Defence Deposits;
  - (x) National Defence Bonds and
  - (xi) Unit Trust Certificates at 5% below market value or at the face value whichever is less.  
Also, FDR in favour of FA&CAO (free from any encumbrance) may be accepted.
- (c) The Performance Guarantee shall be submitted by the successful bidder after the Letter of Acceptance (LOA) has been issued, but before signing of the contract agreement. This P.G. shall be initially valid upto the stipulated date of completion plus 60 days beyond that. In case, the time for completion of work gets extended, the Contractor shall get the validity of P.G. extended to cover such extended time for completion of work plus 60 days.
- (d) **The value of PG to be submitted by the Contractor is based on original contract value and shall not change due to subsequent variation(s) in the original contract value.**
- (e) The Performance Guarantee (PG) shall be released after physical completion of the work based on 'Completion Certificate' issued by the competent authority stating that the Contractor has completed the work in all respects satisfactorily.
- (f) Whenever the contract is rescinded, the Performance Guarantee already submitted for the contract shall be encashed.
- (g) The Engineer shall not make a claim under the Performance Guarantee except for amounts to which the President of India is entitled under the contract (not withstanding and/or without prejudice to any other provisions in the contract agreement) in the event of:
- (i) Failure by the Contractor to extend the validity of the Performance Guarantee as described herein above, in which event the Engineer may claim the full amount of the Performance Guarantee.
  - (ii) Failure by the Contractor to pay President of India any amount due, either as agreed by the Contractor or determined under any of the Clauses/Conditions of the Agreement, within 30 days of the service of notice to this effect by Engineer.
  - (iii) The Contract being determined or rescinded under clause 62 of these **conditions**, from time to time, depending upon extension of contract granted in terms of Clause 17 of the General Conditions of Contract.

Further, in case Security Deposit has been submitted as Term Deposit Receipt/Bank Guarantee Bond in full amount, the Bid Security deposited by the Contractor with his tender will be returned by the Railways.

**Note:** After the work is physically completed as certified by competent authority, Security Deposit recovered from the running bills of a Contractor can be returned to him, if he so desires, in lieu of Term Deposit Receipt/irrevocable Bank Guarantee for equivalent amount from Scheduled Bank, to be submitted by him.

**Refund of Security Deposit:** Security Deposit mentioned in sub clause (1) above shall be returned to the Contractor after the following:

- (a) Final Payment of the Contract as per clause 51(1) of GCC, 2022 and
- (b) Execution of Final Supplementary Agreement or Certification by Engineer that Railway has No Claim on Contractor and

- (c) Issue of Maintenance Certificate on expiry of the maintenance period as per clause 50(1) of GCC, 2022.

## **7.1 Extension of Time in Contracts:**

1. Clause 17 A, Part II of GCC shall be read as under: (Ref- 2022/CE-I/CT/GCC - 2022/Policy dated- 14.07.2022)

**17A Extension of Time in Contracts:** Subject to any requirement in the contract as to completion of any portion or portions of the works before completion of the whole, the Contractor shall fully and finally complete the whole of the works comprised in the contract (with such modifications as may be directed under conditions of this contract) by the date entered in the contract or extended date in terms of the following clauses: 4 of 11

(i) **Extension due to Modification:** If any modifications have been ordered which in the opinion of the Engineer have materially increased the magnitude of the work, then such extension of the contracted date of completion may be granted as shall appear to the Engineer to be reasonable in the circumstances, provided moreover that the Contractor shall be responsible for requesting such extension of the date as may be considered necessary as soon as the cause thereof shall arise.

(ii) **Extension for Delay not due to Railway or Contractor:** If in the opinion of the Engineer, the progress of work has any time been delayed by any act or neglect of Railway's employees or by other Contractor employed by the Railway under Sub-Clause (4) of Clause 20 of these Conditions or in executing the work not forming part of the contract but on which Contractor's performance necessarily depends or by reason of proceeding taken or threatened by or dispute with adjoining or to neighbouring owners or public authority arising otherwise through the Contractor's own default etc. or by the delay authorized by the Engineer pending arbitration or in consequences of the Contractor not having received in due time necessary instructions from the Railway for which he shall have specially applied in writing to the Engineer or his authorized representative then upon happening of any such event causing delay, the Contractor shall immediately give notice thereof in writing to the Engineer within 15 days of such happening, but shall nevertheless make constantly his best endeavours to bring down or make good the delay and shall do all that may be reasonably required of him to the satisfaction of the Engineer to proceed with the works. The Contractor may also indicate the period for which the work is likely to be delayed and shall be bound to ask for necessary extension of time.

(iii) **Extension for Delay due to Railways:** In the event of any failure or delay by the Railway to hand over the contractor possession of the lands necessary for the execution of the works or to give the necessary notice to commence the works or to provide the necessary drawings or instruction or any other delay caused by the Railway due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the contract or alter the character thereof or entitle the Contractor to damage or compensation therefor, but in any such case, the Railway may grant such extension or extensions of the completion date as may be considered reasonable.

The contractor shall indicate the period for which the work is likely to be delayed and shall seek extension of time as may be considered necessary under clause 17 A (i) or/ and 17 A (ii) or/and 17A(iii) above, as soon as the cause thereof shall arise and, in any case, not less than 15 days before the expiry of the date fixed for completion of the works. The Engineer shall consider the same and shall grant and communicate such extension of time as in his opinion is reasonable having regard to the nature and period of delay and the type and quantum of work

affected thereby. No other compensation shall be payable for works so carried forward to the extended period of time : the same rate , terms and conditions of contract being applicable , as if such extended period of time was originally provided in the original contract itself.

The non submission of request for extension or submission of request within less than 15 days before the expiry of the date fixed of completion of the works , shall make him ineligible for extension under this sub clauses, subject to final decision of Engineer.

**7.2 Clause 17B, Part II of GCC shall be read as under:** 17B Extension of Time with Liquidated Damages (LD) for delay due to Contractor: The time for the execution of the work or part of the works specified in the contract documents shall be deemed to be the essence of the contract and the works must be completed not later than the date(s) as specified in the contract. If the Contractor fails to complete the works within the time as specified in the contract for the reasons other than the reasons specified in Clause 17 and 17A, the Railway may, if satisfied that the works can be completed by the Contractor within reasonable short time thereafter, allow the contractor for further extension of time (Proforma at Annexure-VII in GCC-2022) as the Engineer may decide. On such extension the Railway will be entitled without prejudice to any other right and remedy available on that behalf, to recover from the Contractor as agreed damages and not by way of penalty for each week or part of the week, a sum calculated at the rate of Liquidated damages as decided by Engineer between 0.05% to 0.30% of the contract value of the works for each week or part of the week.

For the purpose of this Clause, the contract value of the works shall be taken as value of work as per contract agreement including any supplementary work order/contract agreement issued. Provided also, that the total amount of liquidated damages under this condition shall not exceed 5% of the contract value or of the total value of the item or groups of items of work for which a separate distinct completion period is specified in the contract

Provided further, that if the Railway is not satisfied that the works can be completed by the contractor and in the event of failure on the part of the contractor to complete the work within further extension of time allowed as aforesaid, the Railway shall be entitled without prejudice to any other right or remedy available in that behalf, to appropriate the contractor's Security Deposit and rescind the contract under Clause 62 of these Conditions, whether or not actual damage is caused by such default.

NOTE: In a contract, where extension(s) of time have been allowed once under clause 17B, further request(s) for extension of time under clause 17A can also be considered under exceptional circumstances. Such extension(s) of time under clause 17A shall be without any Liquidated damages, but the Liquidated damages already recovered during extension(s) of time granted previously under clause 17B shall not be waived' However, Price variation during such extension(s) shall be dealt as applicable for extension(s) of time under clause 17B.

## **8.0 RECOVERY OF INCOME TAX**

i) In terms of section 101 (c) of the Income Tax Act, 1961, Income Tax including surcharge levied thereon shall be deducted, without any exception, from all payments made to the contractor by the Railway in discharge of this contract at the rate notified by the Central Government at the time of making such payments and deduction certificates would be issued to the contractor on his request. The contractor is advised to settle his final account with the respective Income Tax Officer. However, where specified written instructions are

received from the respective Income Tax Officers in regards to this contract, the same would be followed.

- ii) Income Tax @ 2% of the gross amount will be recovered from all bills of the contractor in terms of Section 194(C) of the Income Tax Act, 1961 as introduced through the Finance, Act, 1972.

Implementation of GST Act. 2017 PROCEDURE FOR PAYMENT OF CONTRACTUALBILL (Authority Railway Board's letter no. 2016/CE-I/CT/12/GST/Pt.I dt.29.06.2017).

It will be the responsibility of service providers (i.e. contractors) to submit the invoice (bill) duly segregating the GST component from the Gross amount of work executed.

The procedure as mentioned below is to be followed while dealing with contractor's payment, as per GST applicable.

- (A) (i) All works contract are to be provided with goods/service code based on the type of contract. In case contract consists of both goods & service, then interpretation regarding nature of contract shall be done as per Clause-8, Chapter-III of CGST Act, 2017. The goods/service code is notified by Ministry of Finance and can be downloaded from the website [www.cbec.gov.in](http://www.cbec.gov.in).
- (ii) The 'on account/final contract certificate' shall be prepared by the Railway on the basis of quantity of work executed and agreemental rates, duly segregating the the GST component.
- (iii) Since the agreemental rates of contract are inclusive of all taxes as per Clause 37 of GCC-2022, the calculation of 'Gross amount of work executed', 'Amount of work executed excluding GST amount' and 'GST amount' in the 'on account/final contract certificate shall be done as under:

Let Z = Gross amount of work executed on the basis of quantum of work executed and agreemental rates.

X = Amount of work executed excluding GST amount.

Y = GST amount as per applicable GST rate for than goods/service code.

R = Percentage rate of GST for that goods/service code.

Then,  $Z = X + Y$ ,  $Y = X * R / 100$

- (iv) Percentage rate of GST was various types of goods/services as finalized by GST council can be downloaded from the website [www.cbec.gov.in](http://www.cbec.gov.in).

- (B) (i). Once the 'on account/final contract certificate' is prepared by railway and communicated to contractor, the contractor shall submit invoice (bill) on his Letter head duly segregating the 'Amount of work executed excluding GST amount' and 'GST' amount (i.e. "X" & "Y" as mentioned in para 8.2(A)(iii) above) along with Invoice No. (bill No.) and all other details required under GST Act. The sample GST compliant invoice is available as Annexure-X.
- (ii) In case contractor is liable to be registered under GST ACT, Railway shall pay to the Contractor 'Gross amount of work executed' (i.e. "Z" as mentioned in para 8.2 (A) (iii) above) duly deducting all other leviable taxes like I/Tax, labour, cess, royalty etc. as applicable. Contractor shall be liable to pay 'GST amount' to respective authority himself. Whereas, railway shall deposit all other taxes deducted to concerned authority as is being



done presently.

- (A) In case contractor is not liable to be registered under GST Act, contractor shall be paid “Amount of work executed excluding GST amount” (i.e. “X” as mentioned in para 8.2 (iii) above) duly deducting all other leviable taxes like I/Tax, labour cess, royalty etc. as applicable. Railway shall deposit ‘GST amount’ as well as all other taxes deducted to concerned authority.
- (iii) In case any need arise to modify the Invoice (Bill) due to any reason, contractor shall submit amended fresh invoice for processing the payment.

## **6.0 Price Variation Clause (PVC):**

**6.1 Applicability:** Price Variation Clause (PVC) shall be applicable only in tender having advertised value above **Rs. 2 Crores**. Provided further that, in a contract where PVC is applicable, following shall be outside the purview of price adjustments (i.e. shall be excluded from the gross value of the work for the purpose of price variation) :

- a) Materials supplied by Railway to the Contractors, either free or at fixed rate;
- b) Any extra item(s) included in subsequent variation falling outside the purview of the Bill(s) of Quantities of tender, under clause 39. (1)(b) of these Standard General Conditions, unless applicability of PVC and ‘Base Month’ has been specially agreed, while fixing the rates of such extra item(s).

**6.2 Base Month:** The Base Month for ‘Price Variation Clause’ shall be taken as the one month prior to closing of tender, unless otherwise stated elsewhere. The quarter for applicability of PVC shall commence from the month following the Base month. The Price Variation shall be based on the average Price Index of the quarter under consideration.

### **6.3 Validity:**

Rates accepted by Railway Administration shall hold good till completion of work and no additional individual claim shall be admissible except:

- (a) Payment/recovery for increase/decrease in GST on works contract or imposition/removal of any tax/cess on Works Contract as per Clause 37,
- (b) Payment/recovery for overall market situation as per Price Variation Clause given hereunder.

**6.4** Components of various items in a contract on which variation in prices be admissible, shall be **besteel, cement, ferrous material, non-ferrous material, insulators, zinc and other materials, labour, plant & machinery, fuel, explosives, detonators etc.** Adjustment for variation in prices of these items shall be determined in the manner prescribed.

**6.5** No price variation shall be admissible for fixed components.

**6.6** The percentages of various components in various type of works shall be as specified for all item (s)/ Bill(s) of Quantities in tender document and the same shall be fixed as per table & classifications given below:

**(I). For Civil Engineering Works (Ref: 2022/ce-i/ct/gcc-2022/policy dated )14.07.2022**

S N	Classification		1A, 2 & 3A	4A	5A	6A	7	8A	9A	1B, 3B, 4B, 5B, 6B 8B & 9B	1C, 3C, 4C, 5C, 6C, 8C & 9C	3D, 4D, 5D, 6D, 8D & 9D	3E, 4E, 5E, 6E, 8E & 9E
	Components												
1	Fixed	*	15	15	15	15	15	15	15	15	15	15	15
2	Labour	L <sub>c</sub>	20	25	30	20	50	20	20	0	0	10	25
3	Steel	S <sub>c</sub>	0	0	0	0	0	0	0	85	0	50	0
4	Cement	C <sub>c</sub>	0	0	15	0	0	0	0	0	85	0	0
5	Plant Machinery & Spares	PM <sub>c</sub>	30	15	5	20	15	20	30	0	0	10	30
6	Fuel & Lubricants	F <sub>c</sub>	25	15	5	15	15	20	15	0	0	10	20
7	Other materials	M <sub>c</sub>	10	15	30	30	5	25	20	0	0	5	10
8	Detonators & Explosive	E <sub>c</sub>	0	15	0	0	0	0	0	0	0	0	0
Total			100	100	100	100	100	100	100	100	100	100	100

\* It shall not be considered for any price variation.

The classification mentioned in the table above represents following type of item(s) in the work(s) –

**1 Earthwork in Formation**

1A All Item(s) excluding 1B or/and 1C

1B Item(s) for supply of Steel

1C Item(s) for supply of Cement

**2 Ballast Supply Works**

**3 Tunnelling Works (Without Explosives)**

3A All Item(s) excluding 3B or/and 3C or/and 3D or/and 3E

3B Item(s) for supply of Steel

3C Item(s) for supply of Cement or/and Grout

3D Item(s) for Fabrication & Erection of Structures including supply of Steel  
Item(s) for Fabrication & Erection of Structures excluding supply of Steel.

**4 Tunnelling Works (With explosives)**

4A All Item(s) excluding 4B or/and 4C or/and 4D or/and 4E

4B Item(s) for supply of Steel

4C Item(s) for supply of Cement or/and Grout

4D Item(s) for Fabrication & Erection of Structures including supply of Steel

4E Item(s) for Fabrication & Erection of Structures excluding supply of Steel.

**5 Building Works**

5A All Item(s) excluding 5B or/and 5C or/and 5D or/and 5E

5B Item(s) for supply of Steel

5C Item(s) for supply of Cement

5D Item(s) for Fabrication & Erection of Structures including supply of Steel

5E Item(s) for Fabrication & Erection of Structures excluding supply of Steel.

**6 Bridges & Protection work**

6A All Item(s) excluding 6B or/and 6C or/and 6D or/and 6E

6B Item(s) for supply of Steel

6C Item(s) for supply of Cement

6D Item(s) for Fabrication, Assembly, Erection & Launching of Girders including supply of Steel

6E Item(s) for Fabrication, Assembly, Erection & Launching of Girders excluding supply of Steel

**7 Permanent Way linking**

**8 Platform, Passenger Amenities**

8A All Item(s) excluding 8B or/and 8C or/and 8D or/and 8E

8B Item(s) for supply of Steel item/fittings

8C Item(s) for supply of Cement Item

8D Item(s) for Fabrication & Erection of Structures including supply of Steel

8E Item(s) for Fabrication & Erection of Structures excluding supply of Steel

**9 Any Other Works not covered in Classification 1 to 8**

9A All Item(s) excluding 9B or/and 9C or/and 9D or/and 9E

9B Item(s) for supply of Steel

9C Item(s) for supply of Cement or/and Grout

9D Item(s) for Fabrication & Erection of Structures including supply of Steel

9E Item(s) for Fabrication & Erection of Structures excluding supply of Steel

**6.7 Formulae:** The Amount of variation in prices in various components (labour, material etc.) shall be worked out by the following formulae:

$$(i) \quad L = \frac{(W \text{ or } W_{SF} \text{ or } W_{SFL} \text{ or } W_{FL}) \times (L_Q - L_B) \times L_C}{L_B \times 100}$$

$$L_B \times 100$$

$$(ii) \quad M = \frac{(W \text{ or } W_{SF} \text{ or } W_F \text{ or } W_{SFL} \text{ or } W_{FL}) \times (M_Q - M_B) \times M_C}{M_B \times 100}$$

$$(iii) \quad F = \frac{(W \text{ or } W_{SF} \text{ or } W_F \text{ or } W_{SFL} \text{ or } W_{FL}) \times (F_Q - F_B) \times F_C}{F_B \times 100}$$

$$(iv) \quad E = \frac{(W) \times (E_Q - E_B) \times E_C}{E_B \times 100}$$

$$(v) \quad PM = \frac{(W \text{ or } W_{SF} \text{ or } W_F \text{ or } W_{SFL} \text{ or } W_{SFL} \text{ or } W_{FL}) \times (PM_Q - PM_B) \times PM_C}{PM_B \times 100}$$

$$(vi) \quad S = \frac{(W \text{ or } W_S \text{ or } W_{SF}) \times (S_Q - S_B) \times S_C}{S_B \times 100}$$

$$(vii) \quad C = \frac{(W \text{ or } W_C) \times (C_Q - C_B) \times C_C}{C_B \times 100}$$

7.0 The demands for escalation of cost shall be allowed on the basis of provisional indices as mentioned above in Clause 46A.7. Any adjustment needed to be done based on the finally published indices shall be made as and when they become available.

8.0 Relevant categories of steel for the purpose of operating Price Variation formula as mentioned in this Clause shall be as under:

SL	Classification	Rates to be used for calculating Sq or Sb
1.	Reinforcement bars and other rounds	Average of per tonne rates of 10mm dia TMT & 25mm dia TMT; confirming IS1786; Fe 500
2.	All types and sizes of angles, channels and joists	Average of per tonne rates of 'Angle 75x75x6mm, Mild Steel Plate 10mm thickness and Channel 150x75mm; confirming IS2062, E250 Gr "A"
3.	All types and sizes of plates	Average of per tonne rates of 'MS Plates 10mm thickness and 25mm thickness; confirming IS2062, E250 Gr "A"
4	Any other section of steel not covered in the above categories	Average of price for the 3 categories covered under SL 1, 2 & 3 in this table.

(2). Relevant city for referring "JPC (Joint Plant Committee)" rates of steel items (SQ /SB) in different Zonal Railways shall be as under :

SL	City	Railway
1.	Delhi	Northern , North Central, North Eastern, North Western
2.	Kolkata	Eastern, East Central, East Coast, Northeast Frontier, South Eastern, Southeast Central
3.	Mumbai	Central, Western, West Central
4.	Chennai	Southern, South Central&South Western

#### Price Variation during Extended Period of Contract

The price adjustment as worked out above, i.e. either increase or decrease shall be applicable upto the stipulated date of completion of work including the extended period of completion where such extension has been granted under Clause 17A of the Standard General Conditions of Contract. However, where extension of time has been granted due to Contractor's failure under Clause 17B of the Standard General Conditions of Contract, price adjustment shall be done as follows:

- a. In case the indices increase above the indices applicable to the last month of original completion period or the extended period under Clause 17A, the price adjustment for the period of extension granted under Clause 17B shall be limited to the amount payable as per the Indices applicable to the last month of the original completion period or the extended period under Clause 17A of the Standard General Conditions of Contract; as the case may be.
- b. In case the indices fall below the indices applicable to the last month of original/ extended period of completion under Clause 17A, as the case may be; then the lower indices shall be adopted for the price adjustment for the period of extension under Clause 17B of the Standard General Conditions of Contract.

#### VARIATIONS IN EXTENT OF CONTRACT

**8.0 Modification to Contract to be in Writing:** In the event of any of the provisions of the contract required to be modified after the contract documents have been signed, the modifications shall be made in writing and signed by the Railway and the Contractor and no work shall proceed under such modifications until this has been done. Any verbal or written arrangement abandoning, modifying, extending, reducing or supplementing the contract or

any of the terms thereof shall be deemed conditional and shall not be binding on the Railway unless and until the same is incorporated in a formal instrument and signed by the Railway and the Contractor, and till then the Railway shall have the right to repudiate such arrangements.

**09.0 Powers of Modification to Contract:** The Engineer on behalf of the Railway shall be entitled by order in writing to enlarge or extend, diminish or reduce the works or make any alterations in their design, character position, site, quantities, dimensions or in the method of their execution or in the combination and use of materials for the execution thereof or to order any additional work to be done or any works not to be done and the Contractor will not be entitled, to any compensation for any increase/reduction in the quantities of work but will be paid only for the actual amount of work done and for approved materials supplied against a specific order.

**10.0** (i) Unless otherwise specified in the special conditions of the contract, the accepted variation in quantity of each individual item of the contract would be upto 25% of the quantity originally contracted, except in case of foundation work (in which **no variation limit shall apply**). **However, the rates for the increased quantities shall be as per sub- para (iii) below.**

(ii) The Contractor shall be bound to carry out the work at the agreed rates and shall not be entitled to any claim or any compensation whatsoever upto the limit of 25% variation in quantity of individual item of works.

(iii) In case an increase in quantity of an individual item by more than 25% of the agreement quantity is considered unavoidable, then same shall be executed at following rates

- a. Quantities operated in excess of 125% but upto 140% of the agreement quantity of the concerned item, shall be paid at 98% of the rate awarded for that item in that particular tender;
- b. Quantities operated in excess of 140% but upto 150% of the agreement quantity of the concerned item shall be paid at 96% of the rate awarded for that item in that particular tender;
- c. Variation in quantities of individual items beyond 150% will be avoided and would be permitted only in exceptional unavoidable circumstances and shall be paid at 96% of the rate awarded for that item in that particular tender.

d. Variation to quantities of Minor Value Item:

The limit for varying quantities for minor value items shall be 100% (as against 25% prescribed for other items). A minor value item for this purpose is defined as an item whose original agreement value is less than 1 % of the total original contract value.

d.(i) Quantities operated upto and including 100% of the agreement quantity of the concerned minor value item, shall be paid at the rate awarded for that item in that particular tender;

d.(ii) Quantities operated in excess of 100% but upto 200% of the agreement quantity of the concerned minor value item, shall be paid at 98% of the rate awarded for that item in that particular tender;

d.(iii) Variation in quantities of individual minor value item beyond 200% will be avoided and would be permitted only in exceptional unavoidable circumstances and shall be paid at 96% of the rate awarded for that item in that particular tender.

(iv) In case of earthwork items, the variation limit of 25% shall apply to the gross quantity of earthwork **items** and variation in the quantities of individual classifications of soil shall not be subject to this limit.

(v) As far as **Standard Schedule of Rates (SSOR)** items are concerned, the **variation** limit of 25% would apply to the value of SSOR schedule(s) as a whole and not on individual **SSOR** items. However, in case of **Non Standard Schedule of Rates (SSOR)** items, the limit of 25% would apply on the individual items irrespective of the manner of quoting the rate (single percentage rate or individual item rate).

**11.0 Valuation of Variations:** The enlargements, extensions, diminution, reduction, alterations or additions referred to in Sub-Clause (2) of this Clause shall in no degree affect the validity of the contract; but shall be performed by the Contractor as provided therein and be subject to the same conditions, stipulations and obligations as if they had been originally and expressively included and provided for in the Specifications and Drawings and the amounts to be paid therefor shall be calculated in accordance with the accepted **Bill(s) of Quantities**. Any extra item(s)/quantities of work falling outside the purview of the provisions of Sub-Clause (2) above shall be paid for at the rates determined under Clause-39 of these Conditions.

## 12.0 SPECIFICATIONS OF WORK AND MATERIALS

Entire work shall be carried out in accordance with the specifications contained in Tender Schedule, USSOR-2011 and IRUSS-2010 subject to modification, addition, supersession by the special specifications contained in this tender document, **CPWD Specifications 2019 Vol I & II updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract, Indian Railways Unified Standard Specification (IRUSS-2019) updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract.**

Any specifications, not covered by this tender document, shall be in accordance with relevant IRS codes, BIS codes and or IRC codes read in the order as they appear here.

Materials to be supplied by the contractor for the work shall conform to specifications contained in the Tender Schedule, USSOR-2011 and IRUSS-2010 edition. If called upon, the contractor shall state the actual source of supply of materials to be supplied by him and shall submit samples for prior approval. During execution of the work, all materials brought to the site by the contractor must be offered for inspection and passed by the Engineer or his representative before being used in the work and such approval shall be recorded in a register maintained for the purpose.

All paints/distemper including plastic paint to be used shall only be those manufactured by one of the following firms or any other approved brand and of colour and shade approved beforehand by the Engineer. These materials shall be brought in sealed drums and each such drum shall be opened in the presence of the Engineer before use.

- M/s Jenson Nicholson.
- M/s British/Berger Paints.
- M/s Shalimar Paints.
- I.C.I.
- Nerolac

Guidelines for procurement of Steel Items in Railway Project/Contracts. Ref: EDCE(G)/Railway Board's letter No.2007/CE-I/CT/8 dt.01.05.12

- (a) All reinforcement Steel (TMT Bars) and Structural Steel shall be procured as per specifications mentioned in BIS's documents – IS: 1786 and IS: 2062 respectively. Independent tests shall be conducted, wherever required, to ensure that the materials procured conform to the specifications.
- (b) These steel shall be procured only from those firms, which are Established, Reliable, Indigenous & Primary Producers of steel, having integrated steel plants (ISP), using iron ore as the basic raw material and having in-house iron rolling facilities, followed by production of liquid steel and crude steel, as per Ministry of Steel's guidelines.

- (c) However, only certain isolated sections of structural steel, not being rolled by ISPs, can be procured from the authorized re-rollers of ISPs or authorized licensee of BIS having traceability system and who use billets produced by ISPs. Traceability shall be ensured by an officer specially authorized by the concerned SAG Officer of the Zonal railway on case to case basis for this purpose.
- (d) Following firms/plants shall be considered qualifying the criteria given in Clause 9.6(b).
- i) SAIL – Plant at Bhilai/Durgapur/Bokaro/Rourkella
  - ii) TISCO – Plant at Jamshedpur
  - iii) IISCO – Plant at Burnpur
  - iv) Alloy Steel Plant – Plant at Durgapur
  - v) Visheswaria Iron & Steel Ltd. – Plant at Bhadravati, Karnataka
  - vi) RINL – Plant at Vishakapatnam
  - vii) JINDAL – Plant at Raigarh.

The sanitary fittings to be supplied shall be of Hindustan, Tyford, Nycer, Parryware or any other approved brand and are subject to prior submission of samples and approval thereof.

Contractor shall furnish copy of the test certificate for cement, reinforcement steel, structural steel issued by the manufacturer for lot from which supply has been taken by the contractor and also furnish the source where the same has been purchased. The Railway reserves the right to take the samples of the materials supplied by the contractor and to get the same tested in reputed laboratories at the cost of the contractor and the results thereof shall be binding on the contractor. Cement bags should bear the information in legible marking of manufacturers name, registered trade mark of the manufacturer if any, type of cement, weight of each bag in kg, date of manufacture as well as month and year of manufacture, and will bear ISI certification mark.

Samples of materials to be supplied by the contractor may be got tested at the contractor's cost in any recognized laboratory at the sole discretion of the Engineer.

Patented items in Works Contract. (Authority Railway Board's Letter no.2018/CE-I/Innov/I dt. 18.01.2018)

In case, the agency supplying the patented item is not the contractor to whom the work is assigned and these items are being procured by the Contractor, the concerned contractor will obtain prior approval from the Engineer-in-charge of the work (Min. JA Grade Officer), who will ensure that all design and safety aspects are taken care of. For any specific requirement concerning execution, warranty etc. an agreement / MOU is to be entered between the main contractor and the party supplying the patented items, clearly bringing out the responsibility of party supplying such patented items. A copy of such MOU will be furnished to the Engineer-in-charge by the main contractor to whom work has been assigned by the Railway and after the approval of Engineer-in-charge; such item can be used in work.

The agency supplying the patented item shall provide complete details/specifications/ drawings of the items including the manner in which it is to be used.

During the installation of such patented items, authorized representative of the firm supplying such patented/propriety items shall be presented and after the execution of



work, a certificate to be issued by the firm supplying the patented item indicating its proper installation. Such certificate will have to be kept in record by the concerned Engineer-in-charge executing the contract, before releasing payment for the work done”.

### 13.0 HIRE CHARGES

The Railway may give to the contractor any plant and equipment on hire, if available, on a specific request made by the contractor to the Railway. However, the Railway shall not entertain any claim of the contractor for compensation due to the Railway's failure to do so. The Railway shall also not entertain any excuse of the contractor for slow progress or non-performance of the work due to the Railway's inability to supply such plants and equipments.

Issue of such plants and equipments shall not be allowed as a matter of routine, rather shall be permitted only in those cases where need for help from the Railway could be established having regard to the nature and urgency of the situation and without adversely affecting normal requirements of the Railway. A statement of materials, thus issued, and hire charges recovered should invariably be furnished along with the final bill by the contractor.

Recovery of hire charges : The hire charges to be recovered from the contractor are to be calculated as under:

1. Cost of materials shall be the book value or last purchase rate, whichever is higher plus 5% for freight and 2% for incidental charges thereon. The cost thus arrived at shall be increased by 12.5% for supervision charges as per extant rules.
2. The hire charges per annum shall be calculated on the cost of the materials arrived at as per sub Para 1 of 12.3 above on the following basis:
  - a. Interest on the total cost of material should be charged at the ruling rate of dividend payable by Railways to the General Revenue plus;  
Depreciation charges at 10 % of the cost of materials arrived at as per sub-Para 1 of above to be charged for all classes of materials plus;
  - b. Additional depreciation charges at 10 % on the total of a & b above shall be charged to meet the contingencies.

The contractor shall bear the cost of carriage, including other incidental charges such as loading, unloading, handling etc, of the plants and equipments to the site of the work and also back to the depot from where they were issued.

No cutting of holes shall be allowed in the plants and equipments thus issued and they shall be returned to the Railway in a completely good and serviceable condition. In case of failure of the contractor to return any plants and equipments in a good and serviceable condition, the cost, thereof, shall be recovered from contractor at the rates arrived at as per para 1 of 12.3 above increased by 100 %. Decision of the engineer-in-charge of the work shall be final in determining condition of the plants and equipments and the same shall be binding on the contractor.

Running expenses including fuel, lubricants and stores and labourers, for the plants and equipments supplied by the Railway, shall also be paid for by the contractor at the cost to be determined by the Railway.

Staff and stores for running the plant may be supplied by the contractor with approval of

engineer-in charge. The staff of the contractor so permitted must be properly skilled to operate the plants and equipments concerned.

#### **14.0 RESPONSIBILITY FOR DAMAGE TO CONTRACTOR'S MATERIALS**

The Railway administration shall not be responsible for any loss or damage to the contractor's materials, equipment, tools and plants due to fire, flood or any other cause whatsoever.

The materials issued by the Railway to the contractor for use in the work shall be treated as contractor's materials for this purpose and the contractor shall make good the materials in the event of any loss or damage thereto.

Part of the work finished but not taken over by the Railway shall be treated as contractors materials for this purpose and the contractor shall be responsible for making good any loss or damage thereto.

#### **15.0 RECOVERY OF CESS**

Building and other construction workers (Regulation of employment and conditions of service) Act, 1996 - West Bengal (applicable for work in West Bengal only)

The tenderer for carrying out any construction work in West Bengal must get themselves registered from the Registering Officer under Section-7 of the Building and other construction workers (Regulation of Employment and Conditions of Service) Act, 1996 and Rules made thereto by the Govt. of West Bengal. The tenderer shall be required to submit certificate of Registration issued from the Registering Officer of the Govt. of West Bengal (Labour Department). For enactment of this Act, the tenderer shall be required to pay Cess @ 1% of cost of Construction work to be deducted from each bill. Cost of materials shall be outside the purview of cess, when supplied under a separate schedule item.

#### **16.0 MEASUREMENTS, CERTIFICATES AND PAYMENTS**

**16. Quantities in Bill(s) of Quantities Annexed to Contract:** The quantities set out in the accepted Bill(s) of Quantities with items of works quantified are the estimated quantities of the works and they shall not be taken as the actual and correct quantities of the work to be executed by the Contractor in fulfillment of his obligations under the contract.

**16(i). Measurement of Works by Railway:** The Contractor shall be paid for the works at the rates in the accepted Bill(s) of Quantities and for extra works at rates determined under Clause 39 of these Conditions on the measurements taken by the Engineer or the Engineer's representative in accordance with the rules prescribed for the purpose by the Railway. The quantities for items the unit of which in the accepted Bill(s) of Quantities is 100 or 1000 shall be calculated to the nearest whole number, any fraction below half being dropped and half and above being taken as one; for items the unit of which in the accepted Bill(s) of Quantities is single, the quantities shall be calculated to two places of decimals. Such measurements will be taken of the work in progress from time to time and at such intervals as in the opinion of the Engineer shall be proper having regard to the progress of works. The date and time on which 'on account' or 'final' measurements are to be made shall be communicated to the Contractor who shall be present at the site and shall sign the results of the measurements (which shall also be signed by the Engineer or the Engineer's representative) recorded in the official measurements book as an acknowledgement of his acceptance of the accuracy of the measurements. Failing the Contractor's attendance, the work may be measured up in his absence and such measurements shall,

notwithstanding such absence, be binding upon the Contractor whether or not he shall have signed the measurement books provided always that any objection made by him to measurement shall be duly investigated and considered in the manner set out below:

- (a) It shall be open to the Contractor to take specific objection to any recorded measurements or Classification on any ground within seven days of the date of such measurements. Any re-measurement taken by the Engineer or the Engineer's representative in the presence of the Contractor or in his absence after due notice has been given to him in consequence of objection made by the Contractor shall be final and binding on the Contractor and no claim whatsoever shall thereafter be entertained regarding the accuracy and Classification of the measurements.
- (b) If an objection raised by the Contractor is found by the Engineer to be incorrect the Contractor shall be liable to pay the actual expenses incurred in measurements.

16(ii). Measurement of Works by Contractor's Authorized Representative (in case the contract provides for the same):

- (a) The Contractor shall be paid for the works at the rates in the accepted **Bill(s) of Quantities** and for extra works at rates determined under Clause 39 of these Conditions on the measurements taken by the Contractor's authorized Engineer in accordance with the rules prescribed for the purpose by the Railway. The quantities for items the unit of which in the accepted **Bill(s) of Quantities** is 100 or 1000 shall be calculated to the nearest whole number, any fraction below half being dropped and half and above being taken as one; for items the unit of which in the accepted **Bill(s) of Quantities** is single, the quantities shall be calculated to two places of decimals. Such measurements will be taken of the work in progress from time to time. The date and time on which 'on account' or 'final' measurements are to be made shall be communicated to the Engineer.

The date and time of test checks shall be communicated to the Contractor who shall be present at the site and shall witness the test checks, failing the Contractor's attendance the test checks may be conducted in his absence and such test checks shall notwithstanding such absence be binding upon Contractor provided always that any objection made by Contractor to test check shall be duly investigated and considered in the manner set out below:

- (i) It shall be open to the Contractor to take specific objection to test checks of any recorded measurement within 7 days of date of such test checks. Any re-test check done by the concerned Railway's authority in the presence of the Contractor or in his absence after due notice given to him in consequent of objection made by the Contractor shall be final and binding on the Contractor and no claim whatsoever shall thereafter be entertained regarding the accuracy and classification of the measurements.
  - (ii) If an objection raised by the Contractor is found by the Engineer to be incorrect the Contractor shall be liable to pay the actual expenses incurred in measurements.
- (b) **Incorrect measurement, actions to be taken:** If in case during test check or otherwise, it is detected by the Engineer that agency has claimed any exaggerated measurement or has claimed any false measurement for the works which have not been executed; amounting to variation of 5% or more of claimed gross bill amount, action shall be taken as following:

- (i) On first occasion of noticing exaggerated/ false measurement, Engineer shall recover liquidated damages equal to 10% of claimed gross bill value.
- (ii) On any next occasion of noticing any exaggerated/false measurement, railway shall recover liquidated damages equal to 15% of claimed gross bill value. In addition, the facility of recording of measurements by Contractor as well as release of provisional payment shall be withdrawn. Once withdrawn, measurements shall be done by railway as per clause 45(i) above.

**17. "On-Account " Payments:** The Contractor shall be entitled to be paid from time to time by way of "On-Account" payment only for such works as in the opinion of the Engineer he has executed in terms of the contract. All payments due on the Engineer's/Engineer's Representative's certificates of measurements or Engineer's certified "Contractor's authorized Engineer's measurements" shall be subject to any deductions which may be made under these presents and shall further be subject to, unless otherwise required by Clause 16 of these Conditions, a retention of six percent by way of Security Deposits, until the amount of Security Deposit by way of such retentions shall amount to 5% of the total value of the contract provided always that the Engineer may by any certificate make any correction or modification in any previous certificate which shall have been issued by him and that the Engineer may withhold any certificate, if the works or any part thereof are not being carried out to his satisfaction.

**18. Rounding off Amounts:** The total amount due on each certificate shall be rounded off to the nearest rupee, i.e. sum less than 50 paise shall be omitted and sums of 50 paise and more up to ₹ 1 will be reckoned as ₹ 1.

**19. On Account Payments not Prejudicial to Final Settlement:** "On-Account" payments made to the Contractor shall be without prejudice to the final making up of the accounts (except where measurements are specifically noted in the Measurement Book as "Final Measurements" and as such have been signed by the Contractor and Engineer/Engineer's Representative) and shall in no respect be considered or used as evidence of any facts stated in or to be inferred from such accounts nor of any particular quantity of work having been executed nor of the manner of its execution being satisfactory.

**20. If payment(s) of Advances are applicable in the contract, as mentioned in the Tender Documents, Railway shall make payment(s) of Interest bearing advances, on the request of contractor. The payment and recovery of such Advances shall be made as under:**

**(a): Mobilisation Advance –**

This shall be limited to 10% of the Contract value and shall be paid in 2 stages :

Stage 1 – 5% of Contract Value on signing of the contract agreement.

Stage 2 – 5% on mobilization of site-establishment, setting up offices, bringing in equipment and actual commencement of work.

The stage 1 of advance shall be payable immediately after signing of contract agreement.

The stage 2 of advance shall be payable at the time of mobilisation, only after submission of an utilization certificate by the contractor that the Stage 1 advance has been properly utilized in the contract.

These Advances shall be payable against irrevocable guarantee (Bank Guarantee, FDRs) from a scheduled commercial bank of India of at least 110% of the value of the sanctioned advance amount (covering principal plus interest).

**(b): Advance Against Machinery and Equipment –**

This advance shall be limited to a maximum of 10% of the contract value against new Machinery & Equipment, involving substantial outlay, brought to site and essentially required for the work. This advance shall not exceed 75% of the purchase price of such Equipment and shall be payable when Equipment is hypothecated to the President of India by a suitable bond or alternatively covered by an irrevocable Bank Guarantee from a scheduled commercial bank of India for full cost of the Plant & Equipment in a form acceptable to Railways. The Plant & Equipment shall be insured for the full value and for the entire period,

they are required for the work. This Plant & Equipment shall not be removed from the site of work without prior written permission of the Engineer. No advance should be given against old Plant & Machinery.

The advances under sub clause (a) and (b) above, are subject to the following conditions -

- (ii) The full amount of Advances shall be recovered from contractor dues. The recovery shall commence when the value of contract executed reaches 15% of original contract value and shall be completed when the value of work executed reaches 85% of the original contract value. The installments on each "on account bill" will be on pro-rata basis.

Interest shall be recovered on the advance outstanding for the period commencing from the date of payment of advance till date of particular on-account bill (through which recovery of principal is effected) and adjusted fully against on-account bill along with pro-rata principal recovery. In the event of any short-fall, the same shall be carried forward to the next on-account bill and shall attract interest.

- (iii) The advances shall be used by the Contractor for the purpose of the Contract, and for the purpose for which they are paid. Under no circumstances, shall the advances be diverted for other purposes. Any such diversion shall be construed as a breach of the Contract and the Contractor shall be asked to return the advance at once and pay interest at 15% per annum till the advance is recovered back from him. The Contractor shall return the advance and pay the interest in one go without demur. The Contractor, if required by the Engineer shall provide the details of utilisation of Mobilisation advance.
- (iv) If the Contractor is found to have contravened the provision, it will constitute a breach of contract and Railway shall be entitled to terminate the contract and forfeit his Performance Guarantee as well as Security Deposit.
- (v) In cases, where the Contract is rescinded as per clause 62 of the contract or short closed under any other condition(s) of the contract, without making full recovery of advances and accrued interest thereon, by the Railway, such balance of advances and accrued interest thereon shall immediately become due and payable by the Contractor to the Railway. The same shall be recovered from any due of Contractor with the Government of India.

**21. Manner of Payment:** Unless otherwise specified payments to the Contractor will be transferred electronically to his bank account.

A. Release of Provisional Payment

- i. Senior Section Engineer / 'Junior Engineer with 5 year experience' (SSE/JE) and AEN/XEN shall sign & record a certificate on the original provisional 'on-account contract certificate' as under:

- a) *"Certified that the payment being made is less than the amount due for the quantities of works executed by the contractor"*.
- b) In case of payment of earthwork items in any contract, calculation of quantity of such items along with field book / level book must be enclosed. This shall be cross checked, as considered appropriate by SSE/JE & AEN/XEN, to ensure that no excess payment is being made.

- ii. AEN/XEN shall keep a copy of contractor's invoice & provision on account contract certificate in his office, and submit original invoice & original provisional on account contract certificate along with required number of duplicate copies, and used sheets of CMB to the Dy. CE/C unit for passing the bill and release of payment.
- iii. The provisional on account contract certificate shall be passed by Dy. CE/C and payment shall be leased by associate finance based on above certification of SSE/JE and AEN/XEN. After release of payment, blank sheet of CMB (if any) shall be crossed by Dy. CE/C before sending the measurement sheets back to AEN/XEN for carrying out required test checks. At this stage measurements shall not be crossed.
- iv. No provisional payment shall be allowed in final contract certificate. Further, once provisional payment has been released in any on-account contract certificate, the next on account contract certificate can be raised by contractor only when accounts of previous on account certificate (Provisional as well as remaining payment) has been finalized.

### **Test Check**

- v. Necessary test checks shall be carried out by the SSE/JE and AEN/XEN for the works done before full payment of on-account contract certificate/final contract certificate. SSE/JE and AEN/XEN shall communicate the date of test checks to contractor in advance. The contractor can accompany during test check. The contractor shall provide support staff and all required tools & plants to facilitate test check by railway officials.
- vi. The stipulated test checks for AEN/XEN and SSE/JE Level is tabulated as under:

S. No	Description of Works	Test Check in terms of % of value by	
		SSE/JE	AEN/XEN
(a)	Measurement of Ballast, pitching stone, Earth work and hidden items.	100%	100%
(b)	Measurement of all other items.	100%	20%
(c)	Initial and Final levels along centre line for earthwork in embankment and cutting.	100%	100%
(d)	Intermittent levels along centre line for earth work in embankment and cutting.	100%	20%
(e)	Initial, intermittent and final levels except centre line for earth work in embankment and cutting.	100%	20%

Note : The check regarding levels of earthwork invariably shall be carried out in cross sections having heavy cross slopes.

- vii. Contractor's recorded measurement sheets shall be checked for any corrections / over writing during test check. All the corrections / over writing shall be initialed by SSE/JE.
- viii. The discrepancy noted (if any) during test check of recorded measurement shall be communicated by AEN/XEN to the contractor.
- ix. In case of discrepancy noticed during test check, the contractor shall submit original and required copies of fresh invoice of amount corrected for discrepancy, and in case provisional payment has been released earlier, the required copies of fresh invoice of remaining amount corrected for discrepancy (if any) , along with on account / final contract certificate to AEN/XEN.

**B. Full payment of On Account Contract Certificate/Final Contract Certificate**

- i) AEN/XEN shall submit original copy of invoice and on account contract certificate of remaining amount / Final Contract Certificate, along with required number of duplicate copies and used sheets of CMB (all used/blank CMBs in case of final contract certificate), duly signed by SSE/JE and AEN/XEN to the Dy. CE/C for passing the bill and release of payment.
- ii) Once the payment is released, Dy. CE/C shall return back the used sheets of CMB to AEN/XEN for safe custody, duly crossing of measurements by finance officer.
- iii) Once all used sheets of a particular CMB is received back by AEN/XEN from Dy. CE/C, the AEN/XEN shall re-bind all 100 pages of CMB along with sheet No. 1A to 4A for submission of CMB to Dy. CE/C office. Dy. CE/C office shall record the receipt of same in sheet No. 2A of CMB and Register of Measurement Books (Form E.1314).
- iv) The final contract certificate shall be passed by Dy. CE/C only after receipt of all CMBs (used/blank) from AEN/XEN.
- v) The provisions of this para 1316A shall be applicable to all the departments of Indian railways and to be executed through equivalent authorities of respective departments.

**C. Zonal railways are advised to introduced the system of measurement of work by contractors, subject to following stipulations:**

Vide Rly. Board's letter no. 2016/CE-1/CT/14/Measurement/3 dated- 21.09.2017

- i) Measurement of work by contractors shall be allowed only in works tender having value rupees 20 crore or more.
- ii) To start with, measurement of work by contractors shall be permitted in 3 works contracts of construction organization on each zonal railway, to be decided by CAO/C.
- iii) The tender documents, where in , measurement of work by contractor is allowed shall contain special condition to this effect, duly incorporating provisions of para E.1316A.



- iv) Measurement recorded by the contractor shall be checked by Railway within 45 days of submission of measurement.
- v) While processing 75% provisional payment bill, concerned executives shall ensure that supply items given by contractor are commensurate with requirement for execution of works.

This issues with the concurrence of Finance Directorate of the Ministry of Railways.

## **22.00 Quality Assurances and Reduced Payment:**

- i) The contractor shall supply all materials and execute all works according to the specification and drawings pertaining to the work, both in respect of structural strength and finish, in addition to complying with provision of GCC-2020.
- ii) Mixing of cement for concrete, mortar etc. shall be done by Mechanical Mixer and concrete should be vibrated by vibrator of appropriate design. All charges for working of machines viz. fuels, drivers, repairs, etc. will have to be borne by the contractor. No extra payment will be made on this account.
- iii) In case a contractor executes a work, which is below the specified structural strength, the work shall be dismantled and re-executed at contractor's cost at the sole discretion of the Engineer at Site.
- iv) In case a contractor executes a work which is structurally up to specifications, but substandard in finish, the same may be approved and accepted by the Railway in cases where finish is not so important, at Railways sole discretion, provided that where such a work is accepted, the payment for such work shall be made @ equivalent to 90% (ninety percent) of the rates accepted for such work in the Schedule of items.

Provisions of Contract Labour (Regulation and Abolition) Act, 1970:

- 22A.(1) The Contractor shall comply with the provision of the contract labour (Regulation and Abolition) Act, 1970 and the Contract labour (Regulation and Abolition) Central Rules 1971 as modified from time to time, wherever applicable and shall also indemnify the Railway from and against any claims under the aforesaid Act and the Rules.
- 22A.(2) The Contractor shall obtain a valid license under the aforesaid Act as modified from time to time before the commencement of the work and continue to have a valid license until the completion of the work. Any failure to fulfill the requirement shall attract the penal provision of the Act.
- 22A.(3) The Contractor shall pay to the labour employed by him directly or through sub-contractors the wages as per provision of the aforesaid Act and the Rules wherever applicable. The Contractor shall notwithstanding the provisions of the contract to the contrary, cause to be paid the wages to labour, indirectly engaged on the works including any engaged by sub-contractors in connection with the said work, as if the labour had been immediately employed by him.
- 22A.(4) In respect of all labour directly or indirectly employed in the work for performance of the Contractor's part of the contract, the Contractor shall comply with or cause to be complied with the provisions of the aforesaid Act and Rules wherever applicable.
- 22A.(5) In every case in which, by virtue of the provisions of the aforesaid Act or the rules, the Railway is obliged to pay any amount of wages to a workman employed by the

Contractor or his sub-contractor in execution of the work or to incur any expenditure on account of the contingent, liability of the Railway due to the Contractor's failure to fulfill his statutory obligations under the aforesaid Act or the Rules, the Railway will recover from the Contractor the amount of wages so paid or the amount of expenditure so incurred and without prejudice to the rights of the Railway under the Section 20, Sub-Section (2) and Section 2, Sub-Section (4) of the aforesaid Act, the Railway shall be at liberty to recover such amount or part thereof from Contractor's bills/Security Deposit or any other dues of Contractor with the Government of India. The Railway shall not be bound to context any claim made against it under Sub-Section (1) of Section 20 and Sub-Section (4) of Section 21 of the aforesaid Act except on the written request of the Contractor and upon his giving to the Railway full security for all costs for which the Railway might become liable in contesting such claim. The decision of the Chief Engineer regarding the amount actually recoverable from the Contractor as stated above shall be final and binding on the Contractor.

- 22B. Provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952: The Contractor shall comply with the provisions of Para 30 & 36-B of the Employees Provident Fund Scheme, 1952; Para 3 & 4 of Employees' Pension Scheme, 1955; and Para 7 & 8 of Employees Deposit Link Insurance Scheme, 1976; as modified from time to time through enactment of "Employees Provident Fund & Miscellaneous Provisions Act, 1952", wherever applicable and shall also indemnify the Railway from and against any claims under the aforesaid Act and Rules.

22 C. Mandatory updation of data on Railway's Shramikkalyan portal by contractor:

1. Contractor is to abide by the provisions of Payment of Wages act & Minimum Wages act in terms of clause 54, 55, 55A & 55B of Indian Railways General Condition of Contract. In order to ensure the same, an application has been developed and hosted on website 'www.shramikkalyan.indianrailways.gov.in'. Contractor shall register his firm/company etc. and upload requisite details of labour and their payment in this portal. These details shall be available in public domain. The registration/ updation in Portal shall be done as under:
  - (a) Contractor shall apply for onetime registration of his company/firm etc. in the Shramikkalyan portal with requisite details subsequent to issue of Letter of Acceptance. Engineer shall approve the contractor's registration on the portal within 7 days of receipt of such request.
  - (b) Contractor once approved by any Engineer, can create password with login ID (PAN No.) for subsequent use of portal for all LOAs issued in his favour.
  - (c) The contractor once registered on the portal, shall provide details of his Letter of Acceptances (LOA) / Contract Agreements on shramikkalyan portal within 15 days of issue of any LOA for approval of concerned engineer. Engineer shall update (if required) and approve the details of LOA filled by contractor within 7 days of receipt of such request.
  - (d) After approval of LOA by Engineer, contractor shall fill the salient details of contract labours engaged in the contract and ensure updating of each wage payment to them on shramikkalyan portal on monthly basis.
  - (e) It shall be mandatory upon the contractor to ensure correct and prompt uploading of all salient details of engaged contractual labour & payments made thereof after

each wage period.

2. While processing payment of any 'On Account bill' or 'Final bill' or release of 'Advances' or 'Performance Guarantee / Security deposit', contractor shall submit a certificate to the Engineer or Engineer's representatives that "I have uploaded the correct details of contract labours engaged in connection with this contract and payments made to them during the wage period in Railway's Shramikkalyan portal at 'www.shramikkalyan.indianrailways.gov.in' till \_\_Month, \_\_\_\_\_Year."

22.D Provision of "The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996" and "The Building and Other Construction Workers' Welfare Cess Act, 1996":

The tenderers, for carrying out any construction work, shall get themselves registered with the Registering Office under Section-7 of the Building and Other Construction Workers Act, 1996 and rules made thereto by the concerned State Govt., and submit certificate of Registration issued from the Registering Officer of the concerned State Govt, (Labour Dept.). The Cess shall be deducted from contractor's bills as per provisions of the Act.

23.0 **Apprentice Act-1961:**

The contractor shall be responsible to ensure compliance with the provisions of the Apprentices Act, 1961 and the Rules & orders issued hereunder from time to time in respect of Apprentices directly or through petty contractors or sub-contractors employed by him for the purpose of carrying out of contract.

If the contractor directly or through petty contractors or sub-contractors fails to do so, his failure will be a breach of the contracts and the Railway may, in its direction rescind the contract. The contractor shall also be liable for any pecuniary liability arising account of any violation of the provisions of the Act.

24.0 **Observance of Statutory Act. Rules, etc.**

The Contractor(s) will be bound by the provision of the minimum wages Act, 1948 as amended from time to time and the rules made hereunder with regard to labour in schedule employment, i.e. on road Construction, building operation and stone breaking and stone crushing "Road Construction" will include new construction as well as maintenance and repairs of roads and building operation will include the construction of docks. Wharfs, jetties, bridge, tunnels, overhead tank etc. and also maintenance and repairs of the same. The provision of the minimum wages Act will also apply to ordinary maintenance works and petty works also. The schedule of minimum wages as prevalent shall be followed.

**If any moneys shall, as a result of any claim or application made under the said Act be directed to be paid by the Railway, such money shall be deemed to be moneys payable to the Railway by the Contractor and on failure by the Contractor to repay the Railway any moneys paid by it as aforesaid within seven days after the same shall have been demanded, the Railways shall be entitled to recover the same from Contractor's bills/Security Deposit or any other dues of Contractor with the Government of India.**

## **25.0 PROVISION OF EFFICIENT AND COMPETENT STAFF AT WORK SITES BY THE CONTRACTOR.**

The contractor shall place and keep on the works at all times efficient and competent staff to give the necessary directions to his workmen and to see that they execute their work in sound & proper manner and shall employ only such supervisors, workman & labourers in or about the execution of any of these works as are careful and skilled in the various trades.

The Contractor shall at once remove from the works any agents, permitted sub-contractor, supervisor, workman or labourer who shall be objected to by the Engineer and if and whenever required by the Engineer, he shall submit a correct return showing the names of all staff and workmen employed by him.

In the event of the Engineer being of the opinion that the Contractor is not employing on the works a sufficient number of staff and workmen as is necessary for proper completion of the works within the time prescribed, the Contractor shall forthwith on receiving intimation to this effect deploy the additional number of staff and labour as specified by the Engineer within seven days of being so required and failure on the part of the Contractor to comply with such instructions will entitle the Railway to rescind the contract under Clause 62 of these conditions.

### **25A Deployment of Qualified Engineers at Work Sites by the Contractor:**

25A.1 The Contractor shall also employ qualified Graduate Engineer or qualified Diploma Engineer, based on the value of contract, as may be prescribed by the Ministry of Railways through separate instructions from time to time.

25A.2 In case the Contractor fails to employ the Engineer, as aforesaid in Para 22A.1, he shall be liable to pay penalty at the rates, as may be prescribed by the Ministry of Railways through separate instructions from time to time for the default period for the provisions, as contained in Para 22A.1.

25A.3 No. of qualified Engineers required to be deployed by the Contractor for various activities contained in the works contract shall be specified in the tender documents as 'Special Condition of Contract' by the tender inviting authority."

## **26.0 SUPPLY OF RAILWAY MATERIALS:**

The Railway Administration may supply under mentioned materials, free of cost, for various items of the work in the schedules unless otherwise specified in this tender subject to their availability:

- Cement
- Mild Steel/Tor Steel for RCC, PRC work.
- Structural Steel for steel fabrication

25.1(a) If these materials are not available with the Railway, the same shall be supplied by the contractor under Schedule of this tender document and, upon their use in the work, shall be paid for at the rates quoted by the tenderer and accepted in the said Schedule.

(b) Quantity of cement, which shall be paid for under the said Schedule, shall be calculated in accordance with the methods outlined in GCC-2020, ERUSSOR-2011 and IRUSS-2010 (volume-I & II), **CPWD Specifications 2019 Vol I & II updated with**

**correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract, Indian Railways Unified Standard Specification (IRUSS-2019) updated with correction slips issued up to date of inviting tender or as otherwise specified in the tender documents, if applicable in the contract** or standard relevant BIS codes etc or by actual site measurements (as in case of controlled concrete or pile foundation etc) in the same order as herein.

- (c) Quantities of both structural and reinforcement steel, which shall be paid for under Schedule, shall be calculated on the basis of actual consumption in respective item(s) of the work and without allowing for any wastage, cut pieces etc.

25.2 For items executed under the “USSOR-2011 & Eastern Railway, L&M Schedule-1987” the supply of materials by the Railway to the contractor shall be regulated as per terms and conditions specified in the preface of the book and the introductory remarks on the top of each of the chapter of the said book of reference subject to extent of modifications detailed herein below-

- (a) Materials, supplied by the Railway, shall be supplied at the store godown (s) of the JE/SE under whom the work will be executed and the contractor shall carry the materials from there to the site of the work by road or by loading into wagons at his own cost as per direction of the Engineer-at-site. Detention of wagons, if any, shall be on the contractor’s account. The tendered rates for items, where materials shall be supplied free by the Railway, shall include loading, unloading, leading, lifting, stacking, handling, re-handling, crossing of lines, tracks, obstructions etc of such materials. No extra payment shall be made in this respect. This supersedes provisions of payment for lead and lift of materials specified in the introductory remarks of various chapters of the USSOR-2011 & Eastern Rly. L&M Schedule-1987.

Materials, to be supplied by the contractor, shall be delivered at the site of consumption and the Railway shall make no payment towards handling, transport, storage and safe custody of the same.

- 25.3 While transporting and storing materials supplied by the Railway, the contractor shall guard against any deterioration, damage or loss due to any cause whatsoever (i. e. cement becoming set due to moisture, steel getting rusted etc) and the contractor shall make necessary precautionary arrangement for this at his own risk and cost. Cost of materials damaged by the contractor shall be recovered as detailed in the Para 23.6(b) below.

- 25.3 (a) In case of supply of cement by the Railway in Jute/Polythene bags, the empty bags, if not required by the railway, shall be retained by the contractor for disposal, preferably to the authorized bag collecting agents, and a sum of Rs. 3/- (Rupees Three only) per bag shall be recovered from the contractor’s bills towards cost of each such bag.
- (b) In case of supply of cement by the railway in paper bags, as in the case of imported cement, the paper bags shall be retained by the contractor for disposal in his own way and no recovery shall be made from his bills towards empty bags.

**25.4** Quantity of materials, supplied by the Railway to the contractor, shall be regulated by the Railway commensurate with progress of the work and shall be issued only on a written demand from the contractor from time to time.

- (a) All materials issued in excess of requirement by the Railway to the contractor shall be returned by the contractor in good condition free of cost at the store godown of the stockholder from where they were issued. In case of reinforcing and / or structural steel, cut pieces to the extent of maximum of 2 % (Two percent) of actual consumption shall be returned without attracting any deduction. For any excess over this quantity, deduction at the rate worked out as per Para 23.6 (b) below would be effected.
- (b) If the contractor fails to return excess materials issued to him, cost of such excess materials shall be recovered, for the quantity of each of such materials not returned, at the rates 1.5 times the prevailing procurement rates at the time of last issue of each of such materials plus 5% (five percent) for freight and 2%(two percent) towards incidental charges. The rates thus arrived at shall be increased by 12.5% (Twelve and half percent) for supervision charges as per extant rules.

**25.5** While transporting materials, whether supplied by the Railway or by the contractor, the contractor shall be fully responsible and answerable for any dislocation or damage caused by him to rail traffic or to roads and for any accidents which may occur en-route and shall make good the same at his own risk and cost. It is deemed that the contractor has fully indemnified the Railway against any claims made by any party for such dislocation, damage or accident. In the event of the contractor failing to make good such loss, the Railway shall do so, at the contractor's cost, at its sole discretion.

#### **26.0 DETERMINATION OF CONTRACT**

- 26.(1) Right of Railway to Determine the Contract:** The Railway shall be entitled to determine and terminate the contract at any time should, in the Railway's opinion, the cessation of work becomes necessary owing to paucity of funds or from any other cause whatever, in which case the value of approved materials at site and of work done to date by the Contractor will be paid for in full at the rate specified in the contract. Notice in writing from the Railway of such determination and the reasons therefor shall be conclusive evidence thereof.
- 26.(2) Payment on Determination of Contract:** Should the contract be determined under sub clause (1) of this clause and the Contractor claims payment for expenditure incurred by him in the expectation of completing the whole of the work, the Railways shall admit and consider such claims as are deemed reasonable and are supported by vouchers to the satisfaction of the Engineer. The Railway's decision on the necessity and propriety of such expenditure shall be final and conclusive.
- 26.(3)** The Contractor shall have no claim to any payment of compensation or otherwise, howsoever on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of determination of contract.

#### **26.(1) Determination of Contract owing to Default of Contractor:**

If the Contractor should:

- (i) Becomes bankrupt or insolvent, or
- (ii) Make an arrangement for assignment in favour of his creditors, or agree to carry out the contract under a Committee of Inspection of his creditors, or
- (iii) Being a Company or Corporation, go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or

- (iv) Have an execution levied on his goods or property on the works, or
- (v) Assign the contract or any part thereof otherwise than as provided in Clause 7 of these Conditions, or
- (vi) Abandon the contract, or
- (vii) Persistently disregard the instructions of the Engineer, or contravene any provision of the contract, or
- (viii) Fail to adhere to the agreed programme of work by a margin of 10% of the stipulated period, or
- (ix) Fail to Execute the contract documents in terms of Para 8 of the **Instructions to Tenderers**.
- (x) Fail to submit the documents pertaining to identity of JV and PAN in terms of Para 17.11 of Tender Form (Second Sheet) of Annexure available in the **Instructions to Tenderers**.
- (xi) Fail to remove materials from the site or to pull down and replace work after receiving from the Engineer notice to the effect that the said materials or works have been condemned or rejected under Clause 25 and 27 of these Conditions, or
- (xii) Fail to take steps to employ competent or additional staff and labour as required under Clause 26 of these Conditions, or
- (xiii) Fail to afford the Engineer or Engineer's representative proper facilities for inspecting the works or any part thereof as required under Clause 28 of these Conditions, or
- (xiv) Promise, offer or give any bribe, commission, gift or advantage either himself or through his partner, agent or servant to any officer or employee of the Railway or to any person on his or on their behalf in relation to the execution of this or any other contract with this Railway.
- (xv) Fail to adhere to the provisions of Para 16 of Tender Form (Second Sheet) of Annexure I (as per GCC-2022) of the **Instructions to Tenderers**, or provision Clause 59(9) of these Conditions.
- (xvi) Submits copy of fake documents / certificates in support of credentials, submitted by the tenderer

## SETTLEMENT OF DISPUTES – INDIAN RAILWAY ARBITRATION AND CONCILIATION RULES

### 27.0 Conciliation of Disputes:

- (i) **This clause is applicable in the tender having advertised value less than or equal to Rs 50 Crore.**
- (ii) All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the "Chief Engineer" or "Divisional Railway Manager" through "Notice of Dispute" provided that no such notice shall be served later than 30 days after the date of issue of Completion Certificate by the Engineer. Chief Engineer or Divisional Railway Manager shall, within 30 days after receipt of the Contractor's "Notice of Dispute", notify the name of conciliator(s) to the Contractor.
- (iii) The Conciliator(s) shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of contract.
- (iv) If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a



written settlement agreement duly signed by Engineer In-charge, Contractor and conciliator(s). When the parties sign the settlement agreement, it shall be final and binding on the parties.

(v) The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.

(vi) The conciliation proceedings shall be terminated as per Section 76 of 'The Arbitration and Conciliation Act, 1996.

**27.1 Matters Finally Determined by the Railway:** All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the GM and the GM shall, within 120 days after receipt of the Contractor's representation, make and notify decisions on all matters referred to by the Contractor in writing provided that matters for which provision has been made in Clauses 7(j), 8, 18, 22(5), 39.1, 39.2, 40A, 43(2), 45(i)(a), 55, 55-A(5), 57, 57A, 61(1), 61(2), 62(1), 63(iv) and 63.2.11 of the Standard General Conditions of Contract or in any Clause (stated as excepted matter) of the Special Conditions of the Contract, shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the Dispute Adjudication Board (DAB) and Arbitration.

**27.2 Dispute Adjudication Board (DAB):** This clause is applicable in the tender having advertised value more than Rs 50 Crore. Any dispute/s if not settled with the Engineer, shall be referred to DAB.

- A. The DAB shall consist of a panel of three Retired Railway Officers, retired not below senior administrative grade (SAG). The DAB shall be formed within 90 days of signing of Contract Agreement. For this purpose, a panel of DAB members shall be maintained in the General Manager's office. The complete panel, which shall not be less than five members, shall be sent by Chief Engineer to the Contractor to nominate one member of the DAB from the panel as Contractor's nominee within two weeks of receipt of the panel. On receipt of Contractor's nominee, the Chief Engineer shall nominate one member from the same panel as Railway nominee for the DAB. Both above nominees shall jointly select presiding member of the DAB from the same panel.
- B. The appointment of DAB shall be effectuated by way of a tri-partite agreement among the Railway, Contractor and the respective DAB members. The terms of the remuneration of each member shall be as fixed by Ministry of Railways from time to time. Each party shall be responsible for paying one-half of this remuneration.
- C. If one or more of the members appointed refuses to act as DAB member, or is unable or unwilling to perform his functions as DAB member for any reason whatsoever or dies or in the opinion of the Chief Engineer fails to act without undue delay, the parties shall terminate the mandate of such DAB member and thereupon new DAB member shall be appointed in the same manner, as the outgoing DAB member had been appointed.
- D. The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Railway or the Contractor acting alone. Unless otherwise agreed by both the Parties, the appointment of the DAB (including each member) shall expire upon expiry of this Contract Agreement.

E .Before start of DAB proceedings, each DAB member shall give the following certificate to the Railway and the Contractor:

*“I have no any past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind. Further, I have no any past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality.”*

F.DAB proceedings shall be conducted as decided by the DAB. The DAB shall give its decision within 90 days of a Dispute referred to it by any of the Parties, duly recording the reasons before arriving at the decision. The DAB shall decide the issue within terms and conditions of the contract. This time limit shall be extendable subject to the Parties mutual agreement.

G. The DAB decision shall not be binding on both the Parties. In case any party is not satisfied by the decision of DAB, then the aggrieved party may approach Arbitral Tribunal for arbitration proceedings.

H. No dispute shall be referred to Arbitral Tribunal unless the same has been referred to DAB for adjudication. However, in case DAB is not formed due to any reason, the disputes can be directly referred to Arbitral Tribunal to adjudicate the dispute.

I. In the specific cases of any misconduct by any of the members of the DAB, the parties shall have the right to specifically bring it to the notice of the DAB such conduct, through a statement filed with necessary documents in proof of such misconduct and the DAB, after taking NOTICE of such conduct initiate the replacement of the member concerned, in the same manner the member to be replaced was appointed.

J. Once the decision is given by DAB, DAB cannot review the decision at its own or on the request of one party, unless both parties agree for review of decision by DAB.

K. In case DAB decision is not challenged by either party within 180 days of receipt of decision of DAB, the decision shall be considered as final and parties would be barred for referring the same to Arbitral Tribunal for adjudication.

L. The obligation of the Railway and the Contractor shall not be altered by reasons of issue being or under reference to DAB.

M. The DAB shall conduct the proceedings at any convenient venue which shall be decided by DAB in consultations with parties.

N. It is a term of this contract that the Parties shall not approach any Court of Law for settlement of such disputes or differences unless an attempt has first been made by the parties to settle such disputes or differences through DAB and Arbitral Tribunal.

## **28. : Demand for Arbitration:**

**28.(1)(i):** In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the Contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the “excepted matters” referred to in Clause 63.1 of these Conditions, the Contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

**28.(1)(ii)(a):** The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.

**28.(1)(ii)(b):** The parties may waive off the applicability of Sub-Section 12(5) of Arbitration and Conciliation (Amendment) Act 2015, if they agree for such waiver in writing, after dispute having arisen between them, in the format given under Annexure XV(GCC-2022) of these conditions.

**28.(1)(iii)(a):** The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

**28.(1)(iii)(b):** The claimant shall submit his claims stating the facts supporting the claims alongwith all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

**28.(1)(iii)(c):** The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal, unless otherwise extension has been granted by Tribunal.

**28.(1)(iii)(d):** Place of Arbitration: The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

**28.(1)(iv):** No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

**28.(1)(v):** If the Contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, he/they will be deemed to have waived his/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.

**28.(2): Obligation During Pendency of Arbitration:** Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

**28.(3) : Appointment of Arbitrator:**

**28.(3)(a) : Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off:**

**28.(3)(a)(i):** In cases where the total value of all claims in question added together does not exceed ₹ 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the

General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.

**28.(3)(a)(ii):** In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below Junior Administrative Grade or 2 Railway Gazetted Officers not below Junior Administrative Grade and a retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in Senior Administrative Grade of other departments of the Railway for the purpose of appointment of arbitrator.

**28.3.(a).iii:** The serving railway officer working in arbitral tribunal in the ongoing arbitration cases as per clause 64.(3)(a)(i) and clause 64.(3)(a)(ii) above, can continue as arbitrator in the tribunal even after his retirement.

**28.(3)(b):** Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off:

(i) In cases where the total value of all claims in question added together does not exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the arbitrator **within 30 days from the receipt of the names of Contractor's nominees.**

(ii) In cases where the total value of all claims in question added together exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding

Arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.

**28.3(c)(i):** If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

**28.3 (c) (ii):** (a) The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The proceedings shall normally be conducted on the basis of documents and written statements.

(b) Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objections raised by any party, if any, regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute (s) submitted to arbitration, applicability of time 'limitation' to any dispute, any violation of agreed procedure regarding conduct of the arbitral proceedings or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by all the members of tribunal should be provided to both the parties.

**28.3(c)(iii):** (i) Qualification of Arbitrator (s):

(a) Serving Gazetted Railway Officers of not below JA Grade level.

(b) Retired Railway Officers not below SA Grade level, one year after his date of retirement.

(c) Age of arbitrator at the time of appointment shall be below 70 years.

(ii) An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.

(iii) While appointing arbitrator(s) under Sub-Clause 64.(3)(a)(i), 64.(3)(a)(ii), 64.(3)(b)(i) & 64.(3)(b)(ii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. A certification to this effect as per annexure- XVI (GCC-2022) shall be taken from Arbitrators also. The proceedings of the Arbitral tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

**28.3(d)(i):** The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred therefrom.

- 28.(3)(d)(ii):** A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.
- 28.(3)(d)(iii):** A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- 28.(4):** In case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 28.(5):** Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.
- 28.(6):** The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties, provided parties sign an agreement in the format given at Annexure XV to these conditions after/ while referring these disputes to Arbitration. Further, the fee payable to the arbitrator(s) would be governed by the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble court otherwise on the matter instructions issued on the subject by Railway Board from time to time irrespective of the.
- 28.(7)** Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules there under and relevant para of **the Standard** General Conditions of Contract and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.
- 28.(8)** In case arbitration award is challenged by a party in the Court of Law, 75% of award amount, pending adjudication by Court of Law, shall be made by party to other party. In case payment is to be made by Railway to Contractor, the terms & conditions as incorporated in the Ministry of Railways letter No. 2016/CE(I)/CT/ARB/3(NITI Aayog)/Pt. dated 08<sup>th</sup> Mar, 2017 as amended from time to time, shall be followed. In case Contractor has to pay to the Railway, then 75% of the award amount shall be deducted by the Railway from the Contractor's bills, Performance Guarantee/ Security Deposit or any other dues of Contractor with the Government of India.

-----E N D-----