

## **ADVISORY NOTE ON CONDITIONS OF CONTRACT AGREEMENT WITH CONTRACTORS FOR HRIDAY PROJECTS**

As we are aware that DPRs from various cities are getting approved in regular interval. Projects worth Rs. 147 crore has already been approved in the HNEC meeting, now the scheme is gaining momentum in project execution phase. City Mission Directorates are in the process of selecting contractors through competitive bidding process. As discussed earlier, City Mission Directorates are using State Government procedures and formats for floating EOI/RFP and drafting the contract agreement for procurement of contractors.

In view of above, it is suggested that the following points should be taken in to consideration while drafting the Eoi/RFP for procurement of contractor and the contract document for agreement with the contractor. The following suggestions are indicative in nature and should be used in the document along with the State Financial Rule or GFR as applicable.

**Please remember that document is only an advisory note and should not be treated as sample contract agreement. City Mission Directorates are suggested to prepare a sound contract agreement in which they can use the conditions/Clauses given below.**

### **1 TIME SCHEDULE & PROGRESS**

- Time allowed for carrying out all the works as entered in the tender/DPR shall be as mentioned which shall be reckoned from the 10th day from the date on which the letter of Intent is issued to the Contractor. The contractor shall also furnish within 7 days of date of letter of Intent a CPM network/ PERT chart/ Bar Chart as project schedule for completion of work within stipulated time. This will be duly got approved from City Mission Directorate (CMD). This approved Network/ PERT Chart shall form a part of the agreement. Contractor shall ensure the completion of the entire work within the stipulated time line approved by CMD.
- Contractor shall mobilize and employ sufficient resources for completion of all the works as indicated in the contract or agreed BAR CHART/Network. No additional payment will be made to the contractor for any multiple shift work or other incentive methods contemplated by him in his work schedule even though the time schedule is approved by the CMD.
- Contractor shall submit fortnightly/ Monthly (as directed by Engineer-in-Charge/PMSU) progress reports (3 copies) on a computer based program (program and software to be approved by Engineer-in- Charge/PMSU) highlighting status of various activities and physical completion of work.
- Contractor shall provide all the data/information of project to the project monitoring team as and when required.

### **2 SETTING OUT OF THE WORKS**

- The contractor shall be responsible for the true and proper setting out of the works and for the correctness of the position, levels, dimensions and alignment of all parts of the works. If at any time during the progress of works, shall any error appear or arise in the position, levels, dimensions or alignment of any part of the works, the contractor shall at his own expenses rectify such error to the satisfaction of Engineer-in- charge. The checking of any setting out or of any line or level by the

engineers of City Mission Directorate shall not in any way relieve the contractor of his responsibility for the correctness.

### 3 DOMAIN EXPERTISE AND TECHNICAL STAFF FOR WORK

- Contractors should have skilled team of craftsmen with relevant past experience in various specialized works to be performed like development of Graffiti, Murals, Sculptures, Curving, Conservation & Restoration works etc. as described in the DPR and the Toolkit. Preference to the local artisan/craftsmen must be given to promote the local art forms, crafts, skillset and age-old construction techniques (as per the requirement of the DPR) etc.
- The contractor shall also employ at his cost the adequate number of technical staff during the execution of this work depending upon the requirement of work. For this purpose the numbers to be deployed, their qualification, experience as decided by City Mission Directorate shall be final and binding on contractor. The contractor shall not be entitled for any extra payment in this regard. The technical staff should be available at site, whenever required by City Mission Directorate to take instructions.
- Within 10 days of letter of intent, the contractor shall submit a site organizational chart and resume of project team including details of experience of the Project-in-Charge and other staff proposed by him and shall depute them on the Project after getting approval from Engineer-in-Charge. If desired by the contractor at later date, the Project-in-Charge and other staff whose resume is approved by City Mission Directorate can be replaced with prior written approval of City Mission Directorate and replacement shall be with equivalent or superior candidate only. Decision of Engineer-in-Charge shall be final and binding on the contractor. Even after approving the site organizational chart, the Engineer-in-Charge due to nature and exigency of work can direct the contractor to depute such additional staff as in view of Engineer-in-Charge
- In case the contractor fails to employ the staff as aforesaid he shall be liable to pay a reasonable amount not exceeding a sum of Rs...../ any suitable amount, for each month of default in the case of each person. The decision of the Engineer-in-charge as to number of Technical Staff to be adequate for the project and the period for which the required technical staff was not employed by the contractor and as to the reasonableness of the amount to be deducted on this account shall be final and binding on the contractor as to the amount and the contractor's liability to pay the said amount.

### 4 ADHERENCE TO THE CITY SPECIFIC TOOLKIT, SPECIFICATIONS, DRAWINGS, ORDERS ETC:

- Works under this Contract shall be executed as per the approved design, make, finishes, specification, drawings, orders and workmanship as laid down in the DPR and the Toolkit, under the direction, supervision and approval of PMSU and HCA. PMSU will direct at what point or points and in what manner work is to be commenced and from time to time to be carried on. But such directions and instruction do not, in any way, exonerate the CMD from obligation to remedy any defects, which are brought to his notice by the HCA, or his representative(s) at any stage of the work or after it is completed.

- The sources of materials and finishes stated in the specifications are those which materials are generally available. However, materials not conforming to specifications shall be rejected even if they come from the stated or other sources and should be tendered accordingly.

## 5 PERFORMANCE GUARANTEE

- “Within 10 days (ten) from the date of issue of letter of award or within such extended time as may be granted by City Mission Directorate in writing, the contractor shall submit a performance bank guarantee to City Mission Directorate to complete the contract agreement. The Performance Bank Guarantee must be in the form mentioned in the EoI/RFP/Contract document and must be from any nationalized bank. The amount for the Performance Bank Guarantee should be equivalent to .....% of the contract value or as per the prevailing state financial rule applicable to the city This bank guarantee shall remain valid up to 90 (ninety) days after the end of defects liability period. In case the contractor fails to submit the performance guarantee of the requisite amount within the stipulated period or extended period, letter of intent will stand withdrawn and EMD of contractor shall be forfeited.

## 6 SECURITY DEPOSIT/ RETENTION MONEY

- The security deposit or the retention money shall be deducted from each running bill of the contractor at .....% of the gross value of the Running Account bill or as per the prevailing state financial rule applicable to the city. The Earnest Money Deposited by the tenderer in the form of D.D. only will be treated as part of the security deposit. The security deposit or retention money shall be refunded to the contractor after expiry of defects liability period or on payment of the amount of the final bill whichever is later.

## 7 INCOME TAX DEDUCTION

- Income tax deductions shall be made from all payments made to the contractor including advances against work done, as per the rules and regulations in force, in accordance with the Income Tax act prevailing from time to time.

## 8 TAXES, LEVIES, DUTIES

- The Contractor shall be responsible to pay to appropriate authority, all taxes, custom duties, levies, sewerage fees, royalties, octroi, sales tax, vat, income tax, etc., as applicable from time to time.

## 9 NO IDLE CHARGES TOWARDS LABOUR OR P & M ETC.

- No idle charges or compensation shall be paid for idling of the contractor’s labour, staff or P&M etc. on any ground or due to any reason whatsoever. City Mission Directorate will not entertain any claim in this respect.

## 10 RATES TO BE FIRM

- The rates quoted by the tenderer shall be firm and fixed for the entire period of completion and till handing over of the work. No revision to rates or any escalation shall be allowed on account of any increase in prices of materials, labour, POL and Overheads etc or any other statutory increase during the entire contract period or extended contract period.
- No claim on account of any price variation / Escalation on whatsoever ground shall be entertained at any stage of works. All rates as per Bill of Quantities (BOQ) quoted by Contractor shall be firm and fixed for entire contract period as well as extended period for completion of the works.

## 11 NO COMPENSATION FOR CANCELLATION/ REDUCTION OF WORKS

- If at any time after the commencement of the work, the City Mission Directorate shall for any reason whatsoever is required to abandon the work or is not require the whole work thereof as specified in the tender to be carried out, the City Mission Director shall give notice in writing of the fact to the contractor. The contractor shall have no claim to any payment of compensation whatsoever 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 the full amount of the work not having been carried out or fore-closure, neither shall he have any claim for compensation by reason of any alterations having been made in the original specifications, drawings, designs and instructions which shall involve any curtailment of the work as originally contemplated.
- Provided that the contractor shall be paid the charges on the cartage only of materials actually and bonafide brought to the site of the work by the contractor and rendered surplus as a result of the abandonment or curtailment of the work or any portion thereof and then taken back by the contractor, provided however, that the City Mission Directorate shall have in all such cases the option of taking over all or any such materials at their purchase price or at local current rates whichever may be less.

## 12 MATERIALS AND SAMPLES

- The materials/ products used on the works shall be one of the approved make/ brands /location out of list of manufacturers/ brands/ makes / location given in the DPR or by HRIDAY City Anchor. The contractor shall submit samples/ specimens out of approved makes of materials/ products to the Engineer-in-Charge for prior approval. In exceptional circumstances Engineer-in-Charge may allow alternate equivalent makes/ brands of products/ materials at his sole discretion. The final choice of brand/ make shall remain with the Engineer-in-Charge and nothing extra on this account shall be payable to the Contractor. In case no make or brand of any materials, articles, fittings and accessories etc. is specified, the same shall comply with the relevant Indian Standard Specifications and shall bear the ISI/BIS stamp/logo.

## 13 TESTS AND INSPECTION

- The contractor shall carry out the various mandatory tests as per specifications and the technical documents that will be furnished to him during the performance of the work. All the tests on materials, as recommended by CMD/PMSU/HCA and relevant Indian Standard Codes or other standard specifications (including all amendments current at the last date of submission of tender documents) shall be got carried out by the contractor at the field testing laboratory or any other recognized institution/ laboratory.

- PMSU/HRIDAY City Anchor by the direction of the City Mission Directorate can ask for sample of material or collect the sample of material from project site in presence of contractor's representative and send the sample for testing in any of Government recognized labs. All testing charges, expenses etc. shall be borne by the contractor.

#### 14 WORKS TO BE OPEN TO INSPECTION

- All works executed or under the course of execution in pursuance of this contract shall at all times be open to inspection and supervision of the City Mission Directorate/PMSU. The work during its progress or after its completion may also be inspected, by third party agency nominated by NMD/CMD or an inspecting authority of State Government. The compliance of observations/ improvements as suggested by the inspecting officers of City Mission Directorate/PMSU/ State authorities/ NMD shall be obligatory on the part of the Contractor at the cost of contractor

#### 15 RESTRICTION ON SUBLETTING

- The contractor shall not sublet or assign the whole or part of the works except where otherwise provided, by the contract and even then only with the prior written consent of the City Mission Directorate and such consent if given shall not relieve the contractor from any liability or obligation under the contract and he shall be responsible for the acts, defaults or neglects of any sub-contractor, his agents, servants or workman as full as if they were the acts, defaults or neglects of the contractor, his agent, servants or workman provided always that the provision of labour on piece work basis shall not be deemed to be a subletting under this clause.
- The contractor may entrust specialist items of works to the agencies specialized in the specific trade. The contractor shall give the names and details of such firm whom it is going to employ for approval of City Mission Directorate. These details shall include the expertise, financial status, technical manpower, equipment, resources and list of works executed and on hand of the specialist agency. City Mission Directorate have the right to reject the proposal.

#### 16 CO-ORDINATION WITH OTHER AGENCIES

- Work shall be carried out in such a manner that the work of other Agencies operating at the site is not hampered due to any action of the Contractor. Proper Co-ordination with other Agencies will be Contractor's responsibility. In case of any dispute the decision of City Mission Directorate shall be final and binding on the contractor. No claim whatsoever shall be admissible on this account

#### 17 DEFECTS LIABILITY PERIOD

- The contractor shall be responsible for the rectification of defects in the works for a period twelve months or period mentioned by CMD from the date of taking over of the works by the Owner/ Client. Any defects discovered and brought to the notice of the contractor forthwith shall be attended to and rectified by him at his own cost and expense. In case the contractor fails to carry out these rectifications, the same may without prejudice to any other right or remedy available, be got rectified by City Mission Directorate at the cost and expense of the contractor.

## 18 ACTION AND COMPENSATION PAYABLE IN CASE OF BAD WORK

- If it shall appear to the City Mission Directorate or his authorized subordinate in charge of the work or to the PMSU or HRIDAY City Anchor or to any other inspecting agency of Government/ State Government or the National Mission Directorate, where any of the work has been executed with unsound, imperfect, or unskillful workmanship or with materials of any inferior description, or that any materials or articles provided by contractor for the execution of the work are unsound or of a quality inferior to that contracted for or otherwise not in accordance with the contract/DPR/toolkit, the contractor shall on demand in writing which shall be made within six months of the completion of the work, from the City Mission Directorate specifying the work, materials or articles complained of notwithstanding that the same may have been passed, Certified and paid for forthwith rectify, or remove and reconstruct the work so specified in whole or in part as the case may require or as the case may be, remove the materials or articles so specified and provide other proper and suitable materials or articles at his own proper charge and cost. In the event of his failing to do so within a period to be specified by the City Mission Director in the demand aforesaid, then the Contractor shall be liable to pay compensation at the rate of one percent of the estimated amount put to tender for every day not exceeding ten days, while his failure to do so shall continue and in the case of any such failure the City Mission Director may rectify or remove, and re-execute the work or remove and replace with others, the materials or articles complained of as the case may be at risk and expense in all respects of the contractor.

## 19 COMPENSATION FOR DELAY AND REMEDIES

- If the contractor fails to maintain the required progress in terms of relevant clause of Conditions of Contract, to complete the work and clear the site on or before the contract or extended date of completion, he shall, without prejudice to any other right or remedy available under the law to the City Mission Directorate on account of such breach, pay as agreed compensation the amount calculated at the rates stipulated below or such smaller amount as the Engineer in charge (whose decision in writing shall be final and binding) may decide on the amount of tendered value of the work for every completed day / week (as applicable) that the progress remains below that specified in the relevant clause in Conditions of Contract or that the work remains incomplete.
- Provided always that the total amount of compensation for delay to be paid under this Condition shall not exceed 10% or any value (given by CMD) of the Tendered Value of work or of the Tendered Value of the item or group of items of work for which a separate period of completion is originally given.
- The amount of compensation may be adjusted or set-off against any sum payable to the Contractor under this or any other contract with City Mission Directorate.

## 20 FORCE MAJEURE

- Any delay in or failure of the performance of either party hereto shall not constitute default hereunder to give rise to any claims for damages, if any to the Extent such delay or failure of performance is caused by occurrences such as acts of God or the public enemy, expropriation, compliance with any order or request of Government authorities, acts of war, rebellions, sabotage fire, floods, illegal strikes, or riots (other than contractor's employees). Only extension of time shall be considered for Force Majeure conditions as accepted by City Mission Directorate. No adjustment in contract price shall be allowed for reasons of force majeure.

## 21 SUSPENSION OF WORKS

- The contractor shall, on receipt of the order in writing from the City Mission director/Engineer-in-charge, suspend the progress of the works or any part thereof for such time and in such manner as the CMD/Engineer-in-charge may consider necessary for any of the following reasons:
  - I. On account of any default on part of the contractor, or for proper execution of the works or part thereof for reason other than the default of the contractor, or
  - II. for safety of the works or part thereof.

The contractor shall, during such suspension, properly protect and secure the works to the extent necessary and carry out the instructions given in that behalf by the CMD/Engineer-in-charge.

- If the suspension is ordered for reasons (ii) and (iii) in sub-para above, the contractor shall be entitled to an extension of the time equal to the period of every such suspension plus 25%. No adjustment of contract price will be allowed for reasons of such suspension.
- In the event of the Contractor treating the suspension as an abandonment of the Contract by City Mission Directorate, he shall have no claim to payment of any compensation on account of any profit or advantage which he may derived from the execution of the work in full.

## 22 CANCELLATION / DETERMINATION OF CONTRACT IN FULL OR PART

- Subject to other provisions contained in this clause the Engineer-in-Charge may, without prejudice to his any other rights or remedy against the contractor in respect of any delay, inferior workmanship, any claims for damages and / or any other provisions of this contract or otherwise, and whether the date of completion has or has not elapsed, by notice in writing absolutely determine the contract in any of the following cases:
  - i. If the contractor having been given by the Engineer-in-Charge a notice in writing to rectify, reconstruct or replace any defective work or that the work is being performed in an inefficient or otherwise improper or un-workmanlike manner shall omit to comply with the requirement of such notice for a period of seven days thereafter; or
  - ii. If the contractor has, without reasonable cause, suspended the progress of the work or has failed to proceed with the work with due diligence so that in the opinion of the CMD/PMSU/Engineer in-Charge (which shall be final and binding) he will be unable to secure completion of the work by the date for completion and continues to do so after a notice in writing of seven days from the Engineer-in-Charge; or
  - iii. If the contractor fails to complete the work within the stipulated date or items of work with individual date of completion, if any stipulated, on or before such date(s) of completion and does not complete them within the period specified in a notice given in writing in that behalf by the Engineer-in-Charge; or
  - iv. If the contractor persistently neglects to carry out his obligations under the contract and / or commits default in complying with any of the terms and conditions of the contract and does not remedy it or take effective steps to remedy it within 7 days after a notice in writing is given to him in that behalf by the Engineer-in-Charge; or
  - v. If the contractor shall offer or give or agree to give to any person in City Mission Directorate service or to any other person on his behalf any gift or consideration of any kind as an

inducement or reward for doing or forbearing to do or for having done or forborne to do any action relation to the obtaining or execution of this or any other contract for City Mission Directorate; or

- vi. If the contractor shall enter into a contract with City Mission Directorate in connection with which commission has been paid or agreed to be paid by him or to his knowledge, unless the particulars of any such commission and the terms of payment thereof have been previously disclosed in writing to the Engineer-in-Charge; or
- vii. If the contractor shall obtain a contract with City Mission Directorate as a result of wrong tendering or other If the contractor being a company, shall pass a resolution or the Court shall make an order for the winding up of the company, or a receiver or manager on behalf of the debenture holders or otherwise shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a receiver or manager; or
- viii. If the contractor shall suffer an execution being levied on his goods and allow it to be continued for a period of 21 days; or
- ix. If the contractor assigns, transfers, sublets (engagement of labour on a piece-work basis or of the labour with materials not to be incorporated in the work, shall not be deemed to be subletting) or otherwise parts with or attempts to assign, transfer sublet or otherwise,

The PMSU/Engineer-in-Charge shall on such cancellation by the City Mission Directorate have powers to:

- a) take possession of site and any materials, constructional plant, implements, stores, etc. thereon; and/ or
- b) carry out the incomplete work by any means at the risk and cost of the contractor; and/ or
- c) To determine or rescind the contract as aforesaid (of which termination or rescission notice in writing to the contractor under the hand of the Engineer-in-Charge shall be conclusive evidence). Upon such determination or rescission the full security deposit recoverable under the contract shall be liable to be forfeited and un-used materials, construction plants, implements, temporary buildings, etc. shall be taken over and shall be absolutely at the disposal of the City Mission Directorate. If any portion of the Security Deposit has not been paid or received it would be called for and forfeited; and/ or
- d) To employ labour paid by the Department and to supply materials to carry out the work or any part of the work debiting the contractor with the cost of the labour and the price of the materials (of the amount of which cost and price certified by the Engineer-in-Charge shall be final and conclusive) against the contractor and crediting him with the value of the work done in all respects in the same manner and at the same rates as if it had been carried out by the contractor under the terms of his contract. The certificate of the Engineer-in-Charge as to the value of the work done shall be final and conclusive against the contractor provided always that action under the sub-clause shall only be taken after giving notice in writing to the contractor. Provided also that if the expenses incurred by the department are less than the amount payable to the contractor at his agreement rates, the difference shall not be paid to the contractor; and/ or
- e) After giving notice to the contractor to measure up the work of the contractor and to take such whole, or the balance or part thereof as shall be un-executed or delayed with reference to the General Conditions of Contract clause and/ or relevant clause of Special Conditions of Contract, out of his hands and to give it to another contractor to complete in which case any expenses which may be incurred in excess of the sum which would have been paid to the original contractor if the whole work had been executed by him (of the amount of which excess the certificate in writing of the Engineer-in-Charge shall be final and conclusive) shall be borne and paid by the original contractor and may be deducted from any money due to him by City Mission Directorate under his contract or on any other account whatsoever.



## 23 INSURANCE OF WORKS ETC.

- Whenever required by City Mission Directorate, the contractor shall produce the policy or the policies of insurance and the receipts for payment of the current premiums.

## 24 THIRD PARTY INSURANCE

- Contractor is required to take third party insurance cover for an amount of 5% (five percent) of contract value from an approved insurance company for insurance against any damage, injury or loss which may occur to any person or property including that of City Mission Directorate, arising out of the execution of the works or temporary works. Wherever required by City Mission Directorate the contractor shall produce the policy or the policies of Insurance and the receipt of payment of the current premiums.

## 25 INSURANCE UNDER WORKMEN COMPENSATION ACT

- Contractor is required to take insurance cover under the Workman Compensation Act, 1923 amended from time to time from an approved insurance company and pay premium charges thereof. Wherever required by City Mission Directorate the contractor shall produce the policy or the policies of Insurance and the receipt of payment of the current premiums.

## 26 WORKMEN'S COMPENSATION ACT

- The contractor shall at all times indemnify City Mission Directorate and Owner against all claims for compensation under the provision of workmen's compensation Act or any other law in force, for any workmen employed by the contractor or his sub-contractor in carrying out the contract and against all costs and expenses incurred by the City Mission Directorate therewith

## 27 LABOUR LAWS TO BE COMPLIED BY THE CONTRACTOR

- The contractor shall obtain a valid license under the contract labour (R & A) Act 1970 and the contract labour Act (R&A) Central Rules 1971 and amended from time to time, and continue to have a valid license until the completion of the work including defect liability period. The contractor shall also abide by the provision of the child labour (Prohibition and Regulation) Act. 1986 and amended from time to time. Any failure to fulfill this requirement shall attract the penal provisions of this contract arising out the resultant

## 28 HEALTH & SANITARY ARRANGEMENTS

- In case of all labor directly or indirectly employed in work for the performance on the contractor's part of this contract, the contractor shall comply with all rules framed by Govt. from time to time for the protection of health and sanitary arrangements for workers.

## 29 LABOUR SAFETY PROVISION

- The contractor shall be fully responsible to observe the labor safety provisions. The Contractor shall in connection with work provide adequate guards, illumination, fencing and watching wherever necessary at the construction site and working area for the safety and convenience of

public or others. The Contractor shall observe and abide by all fire and safety regulations of the owner.

### 30 MINIMUM WAGES ACT

- The contractor shall comply with all the provisions of the minimum wages Act, 1948, contract labour Act (R&A) 1970, and rules framed there under and other labour laws/local laws affecting contract labour that may be brought into force from time to time.

### 31 LABOUR RECORDS

- The contractor shall submit by the 4th & 19th of every month to the Engineer-in-Charge of City Mission Directorate a true statement, showing in respect of the second half of the preceding month and the first half of the current month, respectively, of the following data :-
  - i. The number of the labour employed by him (category-wise).
  - ii. Their working hours.
  - iii. The wages paid to them.
  - iv. The accidents that occurred during the said fortnight showing the circumstances under which they happened and the extent of damage and injury caused.
  - v. Any other information required by Engineer-in-Charge.