

SECTION 3

PART II: CONDITIONS OF PARTICULAR APPLICATION

CLAUSE 1 THE CONTRACT

Sub Clause 1.1 Definitions

Amend Subpara 1.1.10 of Sub-Clause 1.1 to read as follows:

- 1.1.10 (a) "**Contract**" means these Conditions of Contract (Parts I and II), the Employer's Requirements, the Tender, the Contractor's Proposal, the Schedules, the Letter of Acceptance, the Contract Agreement (if completed) and such further documents as may be expressly incorporated in the Letter of Acceptance or Contract Agreement (if completed).

For the purposes of defining the different activities and obligations under the Contract, the Contract will be comprised of a "**Works Contract**" and an "**O&M Contract**", as defined in the following Subparas 1.1.1.1(b) and (c); such definitions are for convenience only and shall not affect the rights or obligations of the Employer or the Contractor under the Contract.

- 1.1.10 (b) "**Works Contract**" means that portion of the Contract that refers to the **design, execution, completion, trial run and commissioning of the Works and the remedying of any defects**, but excluding Operation and Maintenance of the facilities for the Operation and Maintenance Period, in accordance with the provisions of the Contract.

- 1.1.10 (c) "**O&M Contract**" means that portion of the Contract that refers to the **Operation and Maintenance of the facilities for the Operation and Maintenance Period**, as defined in the Appendix to Tender, but excluding the costs of design, execution, completion, trial run and commissioning of the Works and the remedying of any defects, in accordance with the provisions of the Contract.

Amend Sub-Clause 1.1.1 by adding the following definition:

Appendix to Tender" means the completed appendix comprised in the Tender.

"The words '**Appendix to Tender**' are synonymous with the words '**Appendix to Bid**', '**Appendix to Technical Proposal**', and '**Appendix to Price Proposal**'.

Amend Subpara 1.1.75 of Sub-Clause 1.1 by adding the following words at the end:

"The word '**tender**' is synonymous with '**bid**'."

Amend Subpara 1.1.35 by adding the following text in the second paragraph:

"**Engineer**" means the person or persons of the Engineering Department or Engineering Consultants appointed by the Employer to assist the Employer's Representative."

Add Subpara 1.1.84 as follows:

1.1.84 "**MBMC**" means the "Mira Bhayandar Municipal Corporation."

Sub-Clause 1.4 Law and Language

Delete the text of Sub-Clause 1.4 and replace it with the following:

"The law of the Contract is the law of India.

The language of the Contract is the English language.

The language for day to day communications shall be the English language."

Sub-Clause 1.5 Priority of Documents

Replace the list of documents listed under (a) to (k) with the following:

- “(a) the Contract Agreement;
- (b) the Letter of Acceptance;
- (c) the Employer's Requirements;
- (d) the Bid (accepted Price Proposal);
- (e) the Conditions of Contract, Part II;
- (f) the Conditions of Contract, Part I;
- (g) the Schedules;
- (h) the Drawings;
- (i) the Contractor's Proposal (Technical Proposal)
- (j) Standard Specifications; and
- (k) Quality Assurance/Quality Control Manual.”

Sub-Clause 1.6 Contract Agreement

Substitute the wordings in Part I with the following:

“A Contract Agreement in the form annexed, with such modifications as may be necessary to record the agreement reached, shall be executed within the time period specified under Sub-Clause 43.2 of Section I, Instructions to Bidders. The costs of stamp duties and similar charges imposed by the law shall be borne by the contractor.”

CLAUSE 3 THE EMPLOYER'S REPRESENTATIVE

Sub-Clause 3.1 Employer Representative's Duties and Authority

Add the following text at the end of Sub-Clause 3.1:

"The Employer's Representative shall obtain the specific approval of the Employer before taking action under the following clauses of the Conditions of Contract Part I:

- (a) Approving Sub-contracting of any part of the Works under Sub-Clause 4.5.
- (b) Recommending additional cost to the Contract if such a certification would adjust the Contract Price by more than 5% (five percent) of the Contract Price.
- (c) granting an extension of the time for completion under Sub-Clause 8.3.
- (d) suspending progress of part or all of the Works under Sub-Clause 8.7.
- (e) issuing a **Taking-Over Certificate** for the whole of the Works under Sub-Clause 10.1.
- (f) issuing a **Works Contract Completion Certificate** for completion of the Works under Sub-Clause 12.9.
- (g) issuing a **Final Contract Completion Certificate** for completion of the Operations and Maintenance Services under Sub-Clause 12.11.
- (h) issuing a variation under Clause 14, if such a variation would increase the Contract Price by more than 5% (five percent).

It will also include the following issues

- I. Works Contract Implementation Mechanism
- II. Manual of Supervision Procedures
- III. Information and Document Management
- IV. Establish Payment Procedures
- V. Contractor's Work Program.
- VI. Review of Contractor's Designs and Drawings
- VII. Program Control
- VIII. Engineering Control
- IX. Finance and Cost Control
- X. Management of Changes, Claims and Conflicts
- XI. Safety Control
- XII. Quality Control;
- XIII. Commissioning;
- XIV. Defects Liability Period
- XV. Certification of works & Joint recording of MB with corporations engineer till final bill.
- XVI. Act as Third Party inspection agency in case of any Supply tender is called in the scheme.

Notwithstanding the obligation to obtain approval as set out in the preceding paragraph if, in the opinion of the Employer's Representative, an emergency occurs affecting the safety of life or of the Works or of adjoining property, it may, without relieving the Contractor of any of its duties and responsibilities under the Contract, instruct the Contractor to execute all such Work or to do all such things as may, in the opinion of the Employer's Representative, be necessary to abate or reduce the risk. The Contractor shall forthwith comply with the instructions of the Employer's Representative despite the absence of approval of the Employer. The Employer's Representative shall determine the extra cost to the Contractor for carrying out of such instruction and obtain the Employer's approval for an addition to the Contract Price."

CLAUSE 4 THE CONTRACTOR

Sub-Clause 4.1 General Obligations

Add the following sentence to precede the existing text under Sub-Clause 4.1:

"The Contractor is required to check the design criteria and calculations (if any) included in the Employer's Requirements, to confirm their correctness in its bid and to assume full responsibility for them."

Sub-Clause 4.2 Performance Security

Replace the entire text of Sub-Clause 4.2 with the following:

"The Contractor shall provide security for its proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The performance security shall be denominated solely in Indian Rupees in the amount specified in the Appendix to Tender, and shall be in the form of an unconditional and irrevocable bank guarantee issued either by a Nationalized or Scheduled Bank located in India or a foreign bank through a correspondent bank located in India and acceptable to the Employer. The issuing branch of such bank shall be located in Mumbai, Maharashtra, and the bank guarantee shall, if invoked, be encashable when presented in the branch office of such bank

located in Mumbai. When providing such security to the Employer, the Contractor shall notify the Employer's Representative of so doing.

Without limitation to the provisions of the preceding paragraph, whenever the Employer's Representative determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than ten percent (10%) of the portion of the Contract Price, the Contractor, at the written request of the Employer's Representative, shall promptly increase the value of the performance security by an equal percentage.

The performance security shall be valid until the Contractor has completed the whole of the Works, remedied any defects, and completed his obligations for operation and maintenance of the constructed facilities. 80% of the amount of the Performance Security will be released to the Contractor within 14 days of the issue of the Works Contract Completion Certificate for the Works executed as per Sub-Clause 10.4.

The balance amount of the Performance Security will be released to the Contractor within 14 days of the issue of the Final Contract Completion Certificate following completion of Operation and Maintenance of the facilities as per Sub-Clause 10.5.

Prior to making a claim under the performance security, the Employer shall, in every case, notify the Contractor stating the nature of the default for which the claim is to be made."

Sub-Clause 4.3 Contractor's Representative

At the end of Sub-Clause 4.3 add:

"If the Contractor's Representative is not fluent in the English language, the Contractor shall make a competent interpreter available during all working hours."

Sub-Clause 4.4 Subcontractors

Replace the entire text of Sub-Clause 4.5 with the following:

"The Contractor shall not subcontract more than 50% (fifty percent) of the value of the whole of the Works, and any proposed subcontracts shall be subject to the following conditions:

- (a) the Contractor shall not be required to obtain consent for the Specialist Subcontractors who are prequalified; however, the proposed agreement between the Contractor and such Specialist Subcontractors will be subject to approval by the Employer's Representative;
- (b) for all other subcontracts, whether proposed in the tender or at a later date, the Contractor shall, in the format provided in Section 7, Schedules, submit a list of proposed subcontractors along with credentials about their technical capacity, financial capability and experience in works similar to those which are proposed to be subcontracted;
- (c) the Employer's Representative will scrutinize the proposals submitted by the Contractor and approval of the subcontractors will be based on their overall capacity to execute the works proposed to be subcontracted;
- (d) the prior approval of the Employer's Representative shall be obtained for all proposed Subcontractors, as well as for the proposed agreement(s) between the Contractor and such proposed Subcontractors;
- (e) the Contractor shall submit a copy of the proposed agreement between the Contractor and the proposed subcontractor, and such agreement shall require approval of the Employer's Representative. Such proposed agreement(s) should be reasonable, workable and justified; and
- (f) where practicable, the Contractor shall give a fair and reasonable opportunity for contractors from India to be appointed as Subcontractors.

The Contractor will be responsible to ensure that no unauthorized subcontractors are permitted to work at any part of the Site. If, at any stage during execution, a subcontractor is found working at the Site without prior approval of the Employer's Representative, then the

work being done by that subcontractor shall be stopped, the subcontractor shall be expelled from the Site, and an amount equivalent to 50% (fifty percent) of the value of the works done by that subcontractor will only be paid against such work.

The act of subcontracting any Part or Section of the Works will not relieve the Contractor of his overall responsibilities under the Contract. The Contractor shall be responsible for observance by all Subcontractors of all the provisions of the Contract. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as fully as if they were the acts or defaults of the Contractor, his agents or employees.

In the event that the Employer's Representative determines that any Subcontractor's performance with respect to progress, quality or behavior is unsatisfactory, then the Contractor will be required to remove such Subcontractor from the Site and either undertake the Works itself or provide a suitably qualified replacement. If any delays occur as a result, the Contractor will be responsible to take any necessary actions to make up the lost time, for which no additional payments or extension of time will be granted."

Sub-Clause 4.8 Safety Precautions

Add the following para in the end:

The Contractor shall submit, within 14 days of signing of Agreement, the proposed Safety Plan for approval by the Employer's Representative. Such Safety Plan shall be developed to ensure Zero fatal accidents and Zero hazardous incidents/occurrences in all construction works, and during operation and maintenance of the facilities. The Employer's Representative shall scrutinize, modify if required and approve such proposed Safety Plan, in consultation with the Contractor, within 14 days of submission by the Contractor. If the Employer's Representative does not give its approval or objection within the stated period, the Safety Plan shall be deemed to be accepted. Nevertheless, any approval by the Employer's Representative, or failure to object to the proposed Safety Plan, will not relieve the Contractor of any of its obligations or responsibility under the contract."

Sub-Clause 4.9 Quality Assurance

Amend text of Sub-Clause 4.9 with the following:

The Contractor shall submit, within 14 days of signing of Agreement, the proposed Quality Assurance and Quality Control (QA/QC) Program for approval by the Employer's Representative. Such QA/QC Program shall be developed to describe the type, frequency and procedure of tests to be done on the Site(s); type, frequency and procedure of tests to be done in pipe manufacturing units at Site, if applicable; type, frequency and procedure of tests to be done at manufacturers' locations outside the Site; all parameters to be measured in these tests; permissible limits of such parameters; details of laboratories to be established at the Site(s); details of testing equipment and machines and their calibration schedules; details of the contractor's internal control systems for assuring quality control at locations of manufacturers' outside the Site; details of qualifications and experience of the Quality Control professionals to be deployed by the contractor for the entire project; and the systems of Quality Audit to be instituted by the contractor, etc., essential for systematic and professional management as well as adherence to the highest standards of quality of all construction works. The Employer's Representative shall scrutinize, modify if required and approve such proposed QAQC Program, in consultation with the Contractor, within 14 days of submission by the Contractor. If the Employer's Representative does not give its approval or objection within the stated period, the QAQC Program shall be deemed to be accepted. Nevertheless, any approval by the Employer's Representative, or failure to object to the proposed QAQC Program, will not relieve the Contractor of any of its obligations or responsibility under the contract.

The Contractor, prior to commencement of permanent works at the Site, shall set up his own laboratory, with prior notification to the Employer's Representative. The calibration of the laboratory equipment and instruments shall at the initial stages be certified by agencies approved by the Employer's Representative. Laboratory equipment shall be properly maintained and calibrated throughout the period of the Contract by the Contractor at his own expense.

The Contractor shall give the Employer's Representative at least 24 hours advance notice prior to conducting any tests for materials and work. The Employer's Representative will also inspect the laboratory if deemed necessary and the Contractor shall provide adequate facilities to the Employer's Representatives for his independent verification of the accuracy and adequacy of the facilities. The list of mandatory equipment to be provided at the Site by the Contractor is indicated in Section 4, Employer's Requirements."

Sub-Clause 4.10 Site Data

Amend text of Sub-Clause 4.10 and replace it with the following:

"The Employer does not warrant either the sufficiency or accuracy of data provided in this document or elsewhere. The Contractor shall be wholly responsible for interpreting all data, including any data listed elsewhere in the Contract as open for inspection at the office of the Commissioner, Mira Bhyandar Municipal Corporation, and for undertaking any necessary confirmatory or additional surveys that he deems necessary before submitting the Tender."

Sub-Clause 4.17 Contractor's Equipment

Add the following paragraph at the end of this Sub-clause:

"Unless otherwise stated in the Employer's Requirements, the Contractor shall provide all Contractor's Equipment necessary to complete the Works, including testing, trial run and commissioning, and to operate, maintain, inspect and repair as necessary the constructed facilities during the Operation and Maintenance Period."

"The Contractor shall submit, within 14 days of signing the Agreement, the proposed Deployment Program of all necessary Equipment, Plant and Machinery to be used for construction (such as pipe fabricating plant, pipe coating plant, pipe lining machines, excavators, concrete batching plants, hot mix plants, generators, welding sets, shuttering sets, soil compactors, etc.) for approval by the Employer's Representative. Such Deployment Program shall be developed on a normally available commercial project management software showing detailed micro-level equipment, plant and machinery along with bar charts, essential for systematic and professional management of all construction works. The Employer's Representative shall scrutinize, modify if required and approve such proposed Deployment Program, in consultation with the Contractor, within 14 days of submission by the Contractor. If the Employer's Representative does not give its approval or objection within the stated period, the Deployment Program shall be deemed to be accepted. Nevertheless, any approval by the Employer's Representative, or failure to object to the proposed Deployment Program, will not relieve the Contractor of any of its obligations or responsibility under the contract."

CLAUSE 5 DESIGN

Sub-Clause 5.1 General Obligations

Replace the first sentence with the following sentence:

"The Contractor shall carry out, and be responsible for, the design of the Works, including any site surveys, subsoil investigations, materials testing, and all other things necessary for proper planning and design."

Add the following paragraphs at the end of this Sub-Clause:

"The Contractor will be required to establish a fully equipped design office at Mira Bhyandar City, Maharashtra, within 14 days of receipt of the Notice to Commence to facilitate preparation and submission of designs, drawings, construction documents, etc., for review and approval of designs by the Employer's Representative. The design office shall preferably be located near the Employer's office to facilitate communications and frequent interactions with the Employer's Representative. The Contractor shall provide full time design staff and continuously maintain the design office until such time as all necessary

designs and Construction Documents have been completed, reviewed and approved by the Employer's Representative.

The Contractor will be fully responsible to ensure that its designs, drawings and construction documents satisfy the requirements for constructing Works that are complete and sufficient in all respects, and satisfy the objectives of providing completed facilities that can be operated efficiently and economically. No approval of, or failure to object to, the Contractor's designs, drawings or Construction Documents by the Employer's Representative will relieve the Contractor of its responsibility."

Collection system design is strictly to be carried out with computer program sewer CAD.

Sub-Clause 5.2 Construction Documents

In Sub-Clause 5.2 delete sub-paragraph (a) and replace it with the following:

"(a) The Contractor shall submit, within 14 days of signing the Agreement, the proposed "Submission and Anticipated Approval Program" of all necessary Construction Documents for approval by the Employer's Representative. Such Program shall be developed in order to ensure availability of all construction documents on site in a timely manner essential for systematic and professional management of all construction works. The Employer's Representative shall scrutinize, modify if required and approve such proposed Program, in consultation with the Contractor, within 14 days of submission by the Contractor. If the Employer's Representative does not give its approval or objection within the stated period, the Approval Program shall be deemed to be accepted. Nevertheless, any approval by the Employer's Representative, or failure to object to the proposed Approval Program, will not relieve the Contractor of any of its obligations or responsibility under the contract. Construction shall not commence until the Contractor receives from the Employer's Representative approval of the Construction Documents relevant to the design and construction of such parts; provided always that if the Employer's Representative fails to give his ruling at the end of 28 days, despite the Contractor's written reminder at the end of the 21 days "review period", then the Contractor may proceed with the construction as though approval had been given. If any delay occurs as a result of delays in approval/decisions beyond 28 days by the Employer's Representative, such delay shall not be attributable to the Contractor."

Sub-Clause 5.4 Technical Standards & Regulations

Add the following sentence to the end of the Sub-Clause 5.4:

"In respect of technical specifications and standards, any National or International Standards which promise to confer equal or better quality than the standards specified will also be acceptable."

CLAUSE 6 STAFF AND LABOR

Sub-Clause 6.5 Working Hours

Add the following paragraph:

"The Operation and Maintenance work shall be carried out 24 hours a day in 3(three) shifts."

Sub-Clause 6.8 Contractor's Superintendence

Add the following paragraph at the end of Sub-Clause 6.8:

"The Contractor shall submit, within 14 days of signing the Agreement, the proposed Deployment Program of all key personnel as well as workers for superintendence of construction activities for approval by the Employer's Representative. Such Deployment Program shall be developed showing details of qualifications and experience of key personnel and number of skilled/semi-skilled/un-skilled workers to be deployed on a timeline

essential for proper superintendence and systematic and professional management of all construction works. The Employer's Representative shall scrutinize, modify if required and approve such proposed Deployment Program, in consultation with the Contractor, within 14 days of submission by the Contractor. If the Employer's Representative does not give its approval or objection within the stated period, the Deployment Program shall be deemed to be accepted. Nevertheless, any approval by the Employer's Representative, or failure to object to the proposed Deployment Program, will not relieve the Contractor of any of its obligations or responsibility under the contract. A reasonable proportion of the Contractor's Superintending staff shall have a working knowledge of the English language, or the Contractor shall have sufficient competent interpreters available on site during all working hours."

CLAUSE 7 PLANT, MATERIALS AND WORKMANSHIP

Add the following paragraph at the end of Sub-clause 7.1:

"The Contractor shall submit, within 14 days of signing the Agreement, the proposed Procurement Program of all necessary Equipment, Plant and Materials to be incorporated in the Permanent Works (such as Pumps, Motors, MS Plates/MS Coils, Cement, Reinforcement Steel, etc) for approval by the Employer's Representative. Such Procurement Program shall be developed on a normally available commercial project management software showing detailed planning for placing of orders, inspection by the representatives of the Contractor, Employer or Third Party Agencies, as applicable, transportation plans and delivery schedules for all Equipment, Plant and Materials to be incorporated in Permanent Works essential for systematic and professional management of all construction works. The Employer's Representative shall scrutinize, modify if required and approve such proposed Procurement Program, in consultation with the Contractor, within 14 days of submission by the Contractor. If the Employer's Representative does not give its approval or objection within the stated period, the Procurement Program shall be deemed to be accepted. Nevertheless, any approval by the Employer's Representative, or failure to object to the proposed Procurement Program, will not relieve the Contractor of any of its obligations or responsibility under the contract."

Sub-Clause 7.5 Rejection

Add the following sentence to the end of the second paragraph:

"The additional costs will be calculated based on the direct cost of any labor, equipment, materials, superintendence and other services provided by the Employer for carrying out such retesting, as certified by the Employer's Representative, plus an administration fee of 10% (ten percent) of the direct costs to cover overheads and other indirect costs."

Add the following Sub-Clauses under Section 7, Plant, Materials and Workmanship

CLAUSE 8 COMMENCEMENT, DELAYS AND SUSPENSION

Sub-Clause 8.1 Commencement of Works

Amend the first sentence to read as follows:

"The Contractor shall commence the design of the Works as soon as is reasonably possible after the receipt of a notice to this effect from the Employer's Representative, but in any event not later than 14 days after establishing the design office or not later than 30 days after issue of Notice to Commence. The Contractor shall commence the execution of the Works as soon as is reasonably possible after the receipt of a notice to this effect from the Employer's Representative, but in any event not later than 21 days after commencing establishment of the Site offices and field laboratories or not later than 60 days after issue of Notice to Commence."

Add the following paragraph at the end of the Clause:

“The Contractor shall commence the Operation and Maintenance services immediately after successful commissioning of the Works and issuance of the Taking-Over Certificate by the Employer. The Works will be handed over back to the Contractor for the purpose of Operation and Maintenance.”

Sub-Clause 8.2 Time for Completion

Delete the text of Sub-Clause 8.2 in its entirety and replace it with the following:

“**Time is of the Essence under the Contract** and the Contractor will be required to take all possible measures to ensure that the Works are executed in conformity with the key milestones as set out in Section 4, Employer’s Requirements, and that the whole of the Works are completed within the scheduled Time for Completion. Any hindrances which are outside the control of the Contractor and which may cause a delay in completing some components or parts of the Works will not be construed as justification for delaying completion of, or not executing, those components or parts which are not affected by such hindrance. **Time extensions, if any, will only be considered for those components or parts of the Works which have been delayed for reasons outside the control of the Contractor, as defined under Sub-Clause 8.3.** In case any hindrance occurs which is outside the control of the Contractor that will cause a delay in completion of any of the key activities which are defined as a Milestone, but will not cause a delay in the **Time for Completion of the whole of the Works, then the Employer will only consider a time extension for the affected activity, and not for the whole of the Works.**”

The whole of the Works and each Section (if any) shall be completed and shall have passed the Tests on Completion, trial run and commissioning within the Time for Completion of the Works as specified in the Appendix to Tender. The Taking-Over Certificate will be issued upon successful completion of the Test on Completion, trial run and commissioning, including rectification of any defects observed during this period, in accordance with the provisions of Sub-Clause 10.1.

Operation and Maintenance of the facilities shall be carried out for the period as specified in the Appendix to Tender.”

CLAUSE 9 DESIGNS- BUILD

Sub-Clause 9.9 Payment for plant and Material in event of suspension.

Add the following line at the end of the last paragraph

The payment may be part or full as per the discretion of Employer’s Representative and shall be made after the inspection of plant /material and certification.

Sub-clause 9.10 Prolonged Suspensions

This clause is deleted.

Sub-clause 9.11 Resumption of Work

This clause is deleted.

CLAUSE 10 OPERATION SERVICE

Sub-clause 10.3 Independent Compliance Audit

Read the first paragraph as-

At least 182 days prior to the commencement of the operation service, the Employer shall appoint the Auditing Body.

Sub-clause 10.7 Failure to reach production Outputs.

Read the last line of first paragraph, point (a) as .-

Shall pay the contractor his cost as agreed by Employer.

CLAUSE 11 TESTING

No amendments

CLAUSE 12 DEFECTS

Add the following Sub-Clause 12.7

Sub-Clause 12.7 Completion of Operations and Maintenance Services

“In order that the Works shall be in the condition required by the Contract upon expiry of the Operation and Maintenance Period and can be handed over to the Employer in good operating condition (fair wear and tear excepted), the Contractor shall:

- (a) ensure that all mechanical and electrical Plant and Equipment are fully functional and in good operating condition, suitable for the purposes for which they were intended;
- (b) ensure that all defects or damages which may have arisen from the design, workmanship, materials, or improper operating conditions or maintenance practices, have been identified and remedied;
- (c) provide replacements for all spare parts that were used/consumed during the Operations and Maintenance Period; all such replacements shall be new manufacturer's original equipment only; and
- (d) execute all required work of amendment, reconstruction, repair and remedying defects or damage as may be instructed by the Employer or Employer's Representative.

All such work shall be executed by the Contractor at his own cost before handing over the facilities. In the event that the Contractor fails to carry out the necessary remedial works, the Employer's Representative shall notify the Contractor accordingly, and proceed in accordance with the provisions of Sub-Clause 12.4 (a) and (b). Any costs incurred by the Employer in so doing shall be recoverable from the Contractor and will become a debt due and payable by the Contractor to the Employer and the Employer may, at his sole discretion, recover such amount by invoking the Contractor's bank guarantee provided as a performance security

The Contract shall not be considered to be completed until the Final Contract Completion Certificate has been signed by the Employer's Representative and delivered to the Contractor, stating the date upon which the Contractor has completed his operation and maintenance obligations to the Employer's Representative's satisfaction. The Final Contract Completion Certificate shall be given by the Employer's Representative by the date 28 days after expiry of the Operation and Maintenance Period, or as soon after such date as the Contractor has completed his obligations.

Only the Final Contract Completion Certificate shall be deemed to constitute final certification that the Contractor has satisfactorily fulfilled all of his obligations under the Contract

CLAUSE 13 VARIATIONS

Add the following as Sub-Clause 13.9:

Sub-Clause 13.9 Amendments to the Contract Conditions/Specifications

“If the Employer’s Representative determines that if, in exceptional circumstances, it would be in best interests of the Project to modify or amend some of the Contract Conditions/ Specifications, then such modifications or amendments may be made if mutually agreed by the Employer and the Contractor.”

CLAUSE 14 CONTRACT PRICE AND PAYMENT

Sub-Clause 14.1 The Contract Price

Delete the text of Sub-Clause 14.1 in its entirety and replace it with the following:

- “(a) Payment for the Works shall be made on percentage basis, as applicable, under four major work categories as follow:
- (i) Design and documentation, including all necessary designs and documentation required for the Work;
 - (ii) Civil works, installation, testing, commissioning and other services required for the different components in accordance with the payment units as set out in the Schedule of Prices and/or as proposed by the Contractor and approved by the Employer’s Representative;
 - (iii) Plant and equipment, whether manufactured or fabricated outside or within the Employer’s country, including supply of all electro-mechanical, electrical and instrumentation equipment, mandatory spare parts, etc., for the different components according to the payment units as set out in the Schedule of Prices and/or as proposed by the Contractor and approved by the Employer’s Representative; and
 - (iv) Operation and maintenance of the constructed facilities after completion and acceptance of the Works.

Selection of any of the recommended spare parts will be solely at the Employer’s option, and payment for such spare parts, if any, will be made at the quoted percentage basis.

The Contract Price shall be adjusted for changes in the cost of labor and materials in accordance with the provisions of Sub-Clause 13.17 of this Section 3, Conditions of Particular Application.

- (b) The Contractor shall pay all the duties and taxes in consequence of his obligations under the Contract, and the Contract Price shall not be adjusted for such costs, **except as stated in Sub-Clauses 13.16 and 13.17.**
- (c) Any quantities which may be set out in the Schedule are only estimated quantities and are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfillment of his obligations under the Contract. The Contractor is responsible to assess the exact requirements and quantities for all items for the purpose of quoting his rates, and no variation in rates will be allowed on account of any variation in the estimated quantities unless specifically provided elsewhere in the Bid Document.
- (d) Any quantities, prices or rates of payment per unit quantity which may be set out in the Schedule are only to be used for the purposes stated in such Schedule.

Progressive payments shall be made for the work completed by the Contractor in accordance with the provisions of Sub-Clause 13.4.”

Sub-Clause 14.2 Advance Payments

Delete the text of Sub-Clause 14.2 in its entirety and replace it with the following:

“The Employer will, if requested by the Contractor, make mobilization advance payments, interest free for first six months, to the Contractor to assist in defraying the initial expenses that will necessarily be incurred by the Contractor for mobilization and design. After six months, interest equivalent to prevailing prime lending rate of State Bank Of India plus 50 basis point shall be charged on the remaining amount. The contractor may repay the full/part amount at any point of time.

The Employer’s Representative shall issue an Interim Payment Certificate for the first installment after (i) execution of the Form of Agreement by the parties hereto (ii) provision by the Contractor of the Performance Security in accordance with Sub-Clause 4.2 and (iii) provision by the Contractor of an unconditional and irrevocable bank guarantee in amounts and currencies equal to the advance payment. Such bank guarantee shall be issued either by a Nationalized or Scheduled Bank located in India or a foreign bank through a correspondent bank located in India and acceptable to the Employer. The issuing branch shall be located in Mumbai, Maharashtra, and the bank guarantee shall, if invoked, be encashable when presented in the branch office of such bank located in Mumbai. The guarantee shall remain effective until the advance payments have been repaid, but its amount shall be progressively reduced by the amounts repaid by the Contractor as indicated in Interim Payment Certificates.

The Employer will make payment of the mobilization advance only after the Contractor has fulfilled the following conditions:

- (a) Established the dedicated Contract Bank Account
- (b) Mobilized the Project Manager for the Contract.
- (c) Established and staffed a completely equipped and functional design office at Mira Bhyandar.
- (d) Mobilized the survey and subsoil investigation crews to the Site and commenced the surveys and subsoil investigations.
- (e) Submitted a list of proposed subcontractors and their respective agreements for approval by the Employer’s Representative.
- (f) Submitted the proposed “Submission and Anticipated Approval Program” for construction documents for approval by the Employer’s Representative.
- (g) Submitted the proposed construction programme for approval by the Employer’s Representative.
- (h) Submitted, for approval by the Employer’s Representative, mobilization/ deployment schedules, in the formats provided in Section 7, for: (i) Contractor’s key personnel required for managing, executing and supervising the Works, (ii) Contractor’s Plant, Machinery and Equipment required for executing the Works; and (iii) Procurement Schedule for major materials and equipment to be incorporated into the Permanent Works.
- (i) Submitted a Cash Flow Forecast for approval by the Employer’s Representative.
- (j) Submitted a list of proposed quarries, suppliers and manufacturers, along with their credentials, for approval by the Employer’s Representative.
- (k) Submitted details of funds mobilized by himself as per the Cash Flow Forecasts.

It is expected that the Contractor will also mobilize sufficient funds, which should normally be not less than the advance provided by the Employer, so that adequate cash

flow is maintained at all times during execution. The Contractor is required to maintain liquidity from its own sources, and the advance from the Employer is only intended to facilitate the Contractor's mobilization and enhance activities on Site.

Mobilization advance shall be recovered from interim payments, each in the amount of 8.33% (eight and one third percent) of the actual amount of the installment, by way of deduction from the Interim Payment Certificates. Deductions will start from the Interim Payment for the 7th (seventh) month following the month in which the advance was paid, and will end with a deduction from the Interim Payment for the 18th (eighteenth) month after payment of the advance, as per the following schedule:

Interim Payment for the Work Done during the Month After Payment of Advance	Deduction from Interim Payment (Percent of Advance Amount)	Cumulative Recovery of Advance (Percent of Advance Amount)
0 to 6	No Recovery	0%
7	8.33%	8.33%
8	8.33%	16.67%
9	8.33%	25.00%
10	8.33%	33.33%
11	8.33%	41.67%
12	8.33%	50.00%
13	8.33%	58.33%
14	8.33%	66.67%
15	8.33%	75.00%
16	8.33%	83.33%
17	8.33%	91.67%
18	8.33%	100.00%

Provided that if the advance payments have not been fully repaid prior to (i) the time when the total amount of all Interim Payment Certificates reaches ninety percent (90%) of that portion of the Contract Price related to execution of the Works (Works Contract Price) (excluding the advance payments, deductions, repayment of retention and Provisional Sums), or (ii) 24 months after the Commencement Date, or (iii) issue of the Taking-Over Certificate for the Works, or (iv) termination under Clauses 15, 16 or 19 (as the case may be), whichever event occurs first, then the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer. The Employer may, at its sole discretion, encash the Bank Guarantee given by the Contractor as security for such advance, if the Contractor fails to pay such dues to the Employer within a reasonable time."

Sub-Clause 14.3 Application for Advance and interim Payment Certificates

Add the following after sub clause (k)

- (l) Payment for the interim bills shall be on the basis of recording measurements like levels, length etc. taken jointly by contractor and employer's representative and engineer in charge before work commencement and after its entire completion. Major items like Excavation of all components, Providing & laying of pipes, Construction of pumping station, compound walls etc. will be paid for quantities recorded in jointly.
- (m) The contractor shall make available surveyor with minimum 2 numbers of Dual frequency DGPS with star fire subscription coupled with eight numbers of Total station or should

give undertaking to procure legal GIS Mapping and satellite image interpretation software licenses, hardware and instruments to execute the for the recording of measurement for activity.

- (n) The excavated material will be calculated based on levels taken by hydrographic survey/total station survey (Volumetric calculations on LBO basis).
- (o) The contractor shall be required to take sufficient nos. of coloured photographs at their own cost with Camera having date printing arrangements along the length or as directed by the Engineer's representative before commencing the work and equal Nos. After completion of work and during progress of the work at the same locations of initial set of photographs. Contractors shall submit the photos to the Engineer-in charge in the Albums and in soft format for proper records as directed.
- (p) The contractor shall be required to take video shooting at his own cost along the stretch of his work as directed by Engineer-in charge before commencing the work, during the progress of work and after completion of the work.

Sub-Clause 14.9 Delayed Payment

Amend this clause as

Financing charges shall neither be paid or charged to the contractor in case of default/delay in payment by the employer in accordance with sub clause 14.8

Sub-Clause 20.8 Arbitration

Please read first paragraph as

Unless settled amicably ,and subject to sub-clause 20.9 [Failure to comply with Dispute Adjudication Board's decision], any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by Indian arbitration act and all proceedings related to the resolution of any disputes under this Contract shall be carried out in Mumbai, Maharashtra, India as per .”