

Particular Conditions of Contract

Part B -Specific Provisions

The Particular Conditions of Contract (PCC) Part B - Specific provisions, is to amend or for additions to the General Conditions of Contract (GCC-Section 7). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Table of Clauses

1. General Provisions.....	2
1.1 Definitions.....	2
1.5 Priority of Documents.....	2
1.6 Contract Agreement.....	2
3. The Engineer	2
3.4 Replacement of the Engineer.....	2
3.6 Management meetings	2
4. The Contractor	2
4.2 Performance Security.....	2
6. Staff and Labour.....	3
6.1 Engagement of Staff and Labor.....	3
7. Plant, Materials and Workmanship.....	3
7.1 Manner of Execution.....	3
12. Measurement and Evaluation	3
12.3 Evaluation.....	3
13. Variations and Adjustments	4
13.8 Adjustment for changes in Cost.....	4
14. Contract Price and Payment	7
14.1 The Contract Price	7
14.5 Plant and Materials intended for the works	8
14.8 Delayed Payment.....	8
14.15 Currencies of Payment.....	8
15 Termination by Employer.....	9
15.6 Corrupt and Fraudulent Practices.....	9
16. Suspension and Termination by the Contractor.....	9
16.4 Payment on Termination	10

1. General Provisions

1.1 Definitions

Insert following subparagraph 1.1.1.4 and 1.1.1.8 of Sub-Clause 1.1:

The word 'Tender' is synonymous with 'Bid', the words 'Tender documents' with 'bidding documents' and 'letter of tender' to 'letter of technical bid or letter of price bid'.

1.5 Priority of Documents

Replace the list of documents with the list as given below:

- (a) the Contract Agreement,
- (b) the Letter of Acceptance,
- (c) the Technical Bid / Price bid
- (d) addendums
- (e) the Particular Conditions – Part A,
- (f) the Particular Conditions – Part B,
- (g) the General Conditions,
- (h) the Specification,
- (i) the Drawings,
- (j) other documents as listed in Contract

1.6 Contract Agreement

Replace the phrase “The Contract Agreement shall be based upon the form annexed to the Particular Conditions” by the following;

“The Contract Agreement shall be based upon the form as given in Section 9, Contract Forms”

3. The Engineer

3.4 Replacement of the Engineer

Replace the duration of 21 days with 7 days in first line of the sub clause.

3.6 Management meetings

Insert this Sub-Clause at the end of Clause 3:

The Engineer or the Contractor's Representative may require the other to attend a management meeting in order to review the progress with reference to the agreed program and arrangements for future work. The Engineer shall record the business of management meetings and supply copies of the record to those attending the meeting and to the Employer. In the record, responsibilities for any actions to be taken shall be in accordance with the Contract.

4. The Contractor

4.2 Performance Security

Delete third paragraph and substitute:

The Contractor shall ensure that the Performance Security is valid and enforceable until the defects notification period and performance certificate is issued by the Engineer. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance

Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security.

6. Staff and Labour

6.1 Engagement of Staff and Labor

Delete last paragraph and substitute:

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the Jammu and Kashmir state.

7. Plant, Materials and Workmanship

7.1 Manner of Execution

Insert additional paragraph at the end of Sub-Clause 7.1:

The Contractor is encouraged, to the extent practicable and reasonable, to use Goods from sources within the Country.

12. Measurement and Evaluation

12.3 Evaluation

Replace the para 4, 5 and 6 with following:

However, a new rate or price shall be appropriate for an item of work if following conditions are satisfied:

- (a) (i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule, and
- (ii) this change in quantity multiplied by such specified rate for this item exceeds 3% of the Accepted Contract Amount,
- (iii) this item is not specified in the Contract as a "fixed rate item"; or
- (b) (i) the work is instructed under Clause 13 [Variations and Adjustments],
- (ii) no rate or price is specified in the Contract for this item, and
- (iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Rates or Prices for the extra / new items

In case of new items, unit rate or price shall be derived by the following methods, in the order of priority:

- (a) at the accepted premium on CPWD schedule of rates, for 2007 for "extra / excess" items
- (b) in case of no such item exists in CPWD schedule, new rates shall be derived from existing rate of similar comparable item in BOQ.
- (c) In case options a & b are not available, rate will be based on analysis of rates, to be prepared on the prevalent market rates and approved by the EA.

Rates or Prices for excess quantities

In the event of excess quantities covered under clause 12.3(a)(i) and (ii), the Employer will derive the new rates as stated hereunder in the order of priority:

- i) at his quoted premium on CPWD schedule for rates 2007

- “extra / excess items”
- ii) if it is not available in CPWD schedule of rates, it will be paid based on analysis of rates, to be prepared on the basis of prevalent market rates and approved by the EA.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purpose of Interim Payment Certificate as soon as the concerned works commences.

13. Variations and Adjustments

13.8 Adjustment for changes in Cost

Replace the existing price adjustment clause with following new clause:

The amount payable to the Contractor and valued at base prices in accordance with the payment Schedule shall be adjusted for rises or falls in the cost of Labour, Material and Bitumen inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provision of this or any other clause in the Contract, the Contract Price shall be determined to include amounts to cover the contingency of such other rise or fall in costs.

The amount to be added to or deducted from the Interim Payment Certificates for changes in cost shall be determined from formulae as stated below:

Adjustment Formula: The Price Adjustment factor shall be determined in general by the following formula.

Increase or decrease in the cost of Labour, Steel, Cement, bitumen and other materials shall be calculated quarterly. The first statement of price adjustment shall be prepared at the end of quarter in which the work was awarded and the work done from the date of start to the end of quarter shall be taken into account. For subsequent statement, cost of work done during every quarter shall be taken into account. At the completion of work, the work done during the last quarter or fraction, thereof, shall be taken into account.

For the purpose of reckoning the work done during any period, the bills prepared during the period shall be considered. The dates of recording measurements in the Measurement Book by the Engineer's Representative shall be the guiding factor to decide the bills relevant to any period. The date of completion, as finally recorded by the Engineer's Representative in the Measurement Book, shall be the criterion.

The index relevant to any quarter, for which such compensation is paid, shall be the arithmetical average of the indices relevant of the calendar month.

(A) LABOUR

$$V_L = 0.75 \times P_L / 100 \times R \times (I_{L1} - I_{L0}) / I_{L0}$$

V_L = Increase or decrease in the cost of work during the quarter under consideration due to change in rates for labour.

R = The value of the work done in rupees during the quarter under consideration excluding the cost of materials supplied by the department and other items as mentioned in this Clause.

I_{L0} = The base price for labour which is average consumer price index for industrial workers (wholesale prices) as published in Reserve Bank of India Journal / Labour Bureau Simla, for the area.

I_{L1} = The final price for labour which is average consumer price index for industrial workers (wholesale prices for the quarter of calendar year under consideration) as published in Reserve Bank of India Journal / Labour Bureau Simla for the area.

P_L = Percentage of labour components which is 30% of total cost of work.

(Note: In case of revision of minimum wages by the Government or other competent authority, nothing extra would be payable except the price escalation permissible under this Clause).

(B) Steel:

$$V_S = 0.75 \times P_S / 100 \times R \times (I_{S1} - I_{S0}) / I_{S0}$$

V_S = Increase or decrease in the cost during the quarter under consideration due to change in rates of Steel.

R = The value of the work done in rupees during the quarter under consideration excluding the cost of materials supplied by the department.

I_{S0} = The base price for Steel which is average price Index (Steel) published in Reserve Bank of India Journal.

I_{S1} = The final price for Steel which is average price index (Steel) for the quarter under consideration as published in Reserve Bank of India Journal.

P_S = Percentage of Steel components, on actual basis, of total cost of work.

(C) Cement:

$$V_C = 0.75 \times P_C / 100 \times R \times (I_{C1} - I_{C0}) / I_{C0}$$

V_C = Increase or decrease in the cost during the quarter under consideration due to change in rates of Cement.

$R =$ The value of the work done in rupees during the quarter under consideration excluding the cost of materials supplied by the department.

$I_{C_0} =$ The base price for Cement which is average price Index (Cement) published in Reserve Bank of India Journal.

$I_{C_1} =$ The final price for Cement which is average price index (Cement) for the quarter under consideration as published in Reserve Bank of India Journal.

$P_C =$ Percentage of Cement components, on actual basis, of total cost of work.

(D) Bitumen

$$V_B = 0.75 \times P_B / 100 \times R \times (I_{B_1} - I_{B_0}) / I_{B_0}$$

$V_B =$ Increase or decrease in the cost during the quarter under consideration due to change in rates of bitumen.

$R =$ The value of the work done in rupees during the quarter under consideration excluding the cost of materials supplied by the department.

$I_{B_0} =$ The base price for bitumen as supplied by Indian Oil Corporation (IOC) refinery nearest to the place of Works.

$I_{B_1} =$ The final price for bitumen as supplied by Indian Oil Corporation (IOC) refinery nearest to the place of Works.

$P_B =$ Percentage of bitumen components, on actual basis, of total cost of work

(E) Other Material:

$$V_M = 0.75 \times P_M / 100 \times R \times (I_{M_1} - I_{M_0}) / I_{M_0}$$

$V_M =$ Increase or decrease in the cost during the quarter under consideration due to change in rates of other material.

$R =$ The value of the work done in rupees during the quarter under consideration excluding the cost of materials supplied by the department.

$I_{M_0} =$ The base price for material which is average wholesale price Index (all commodities) as published in Reserve Bank of India Journal.

$I_{M_1} =$ The final price for material which is average wholesale price index (all commodities) for the quarter under consideration as published in Reserve Bank of India Journal.

P_M = Percentage of other material components which is
 (100% - 30% - P_S - P_C - P_B) of total cost of work

Base, Current and Provisional Indices: The base cost and indices or prices shall be those prices of the quarter prevailing on the day 28 days prior to the latest date for submission of Bid. Current indices or prices shall be those prevailing on the quarter for which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional escalation can be paid on the basis of indices of the previous quarter in absence of non-publication of indices for concerned quarter by the RBI. Final adjustment amount will be payable to the Contractor when the current indices become available.

Adjustable Amount: The adjustable amount of each Interim Payment Certificate shall be the difference between (i) the amount which, in the opinion of the Engineer, shall be due to the Contractor pursuant to Clause 13.7 including the amount at base rates and prices of the scheduled work carried out but excluding provisional sums and the value of materials on site, and (ii) the amount as calculated in (i) above and included in the last preceding Interim Payment Certificate issued by the Employer's Representative. The adjustable amount shall exclude payments to nominated Sub-Contractors and any other amounts based upon actual cost or current prices.

Adjusted Amount: The adjusted amount of each Payment Certificate shall be determined by applying the Price Adjustment Factor to the adjustable amount, and shall become payable to the Contractor, subject to any deductions therefrom for retention money, liquidated damages, and any other monies due to the Employer from the Contractor including the recovery of advance mobilization loan, if any.

Adjustment due to Shortfall in Progress: In the event the Contractor fails to attain the rate of progress, as per the approved program and schedule of progress, in the first or another quarter of the construction period and the shortfall in progress is covered up by him during subsequent quarter within the Intended Completion Period then the price adjustment of such work is expected to be done in the previous quarter shall be notionally given based upon the price index of that quarter in which such work was required to be done.

If the Contractor fails to complete the Works within the Time for Completion, adjustments of prices thereafter shall be made using either each index or price applicable on the date 49 days prior to the expiry of the Time for Completion, or the current index or price, whichever is more favorable to the Employer; provided that, if an extension of time is granted in accordance with Sub-Clause 8.3, the above provision shall apply to the extended time for completion.

14. Contract Price and Payment

14.1 The Contract Price

Delete sub-paragraph (e) and renumber subparagraphs (c) and (d) as (e) and (f).

Insert following subparagraphs after (b):

- (c) the Contract Price shall include all taxes, duties and other charges imposed outside the Country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, Materials and supplies to be used on or furnished under the Contract, and on the services to be performed under the Contract.
- (d) the Contractor's staff and labor will be liable to pay personal income taxes in the Country in respect of such of their salaries and wages as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

Insert following subparagraphs after renumbered para (f):

- (g) notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefore, imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the Time for Completion plus six months, in an amount equal to the full import duties and taxes which would be payable on the assessed imported value of such Contractor's Equipment and spare parts, and callable in the event the Contractor's Equipment is not exported from the Country on completion of the Contract. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of Contractor's Equipment or spare parts, or upon the completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor's Equipment and spare parts to be exported, based on the depreciation scale(s) and other criteria used by the customs authorities for such purposes under the provisions of the applicable Laws. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (a) the difference between the initial imported value and the residual value of the Contractor's Equipment and spare parts to be exported; and (b) on the initial imported value of Contractor's Equipment and spare parts remaining in the Country after completion of the Contract. Upon payment of such dues within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.
- (h) "ERA will issue essentiality certificate under GOI notification No. 108/95 and 84/97 which will assist the Contractor to obtain any lawful exemptions from payment of Excise Duty or Import Duty on Plant and Materials, which are to be incorporated as a part of the Permanent Works. The

Certificate will be issued in the format indicated in Section IX, which certifies the estimated quantities of materials that are to be incorporated into the permanent works. The responsibility for obtaining any such exemptions from Competent Authority will remain with the supplier/ Contractor and the ERA shall not in any way be responsible for admissibility of the claims or eligibility of the supplier/ Contractor."

14.5 Plant and Materials intended for the works

Replace the entire clause with following:

Payment for the plant and material wherever applicable shall be made only when these are installed.

14.8 Delayed Payment

Replace second paragraph with the following:

The financing charges shall be at the rate of 8% per annum in the currencies the payments are due.

14.15 Currencies of Payment

Insert at the end of Sub-Clause 14.15:

Where any substantial changes in the expected foreign and local currency requirements of the Contractor occur during the execution of the Works, the foreign and local currency proportions of the balance of the Contract Price shall be amended by agreement between the Employer and the Contractor to reflect such substantial change, provided that

- (a) the Contractor shall inform the Employer and the Engineer whenever such substantial change shall occur; or
- (b) the Engineer may recommend a review of such expected requirements if in his judgment there is evidence of a change in the country of origin of Materials, Plant, or Services to be provided under the Contract which will result in any substantial change of such expected requirements.

15 Termination by Employer

15.6 Corrupt and Fraudulent Practices

Replace the definitions of the terms "corrupt practice", "fraudulent practice", "collusive" and "coercive practice" with following:

- a) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- b) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- d) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including

influencing improperly the actions of another party.

16. Suspension and Termination by the Contractor

16.4 Payment on Termination

Delete subparagraph (c).