

**Dedicated Freight Corridor Corporation of India Limited**  
(A Government of India Enterprise)

PLANT AND EQUIPMENT WORKS  
ICB NO. PE P-6

**Response to Queries**

Following are the Employer's Clarifications to the perspective Bidders' queries, w.r.t. to the Pre-Bid meeting held on 22<sup>nd</sup> Dec. 2017 against Bid invitation notification no-2017/HQ/EN/PWC/PE P-6, Dated 01-12-2017 for Design, Manufacturing, Supply, Testing, Commissioning and Training of Plant and Equipment for Railway Track and Electric Over Head Equipment (OHE) on Dadri-Rewari-JNPT Network of Western Dedicated Freight Corridor package.

The aforesaid clarifications would not be a part of the Contract Agreement and no part of such clarifications can be reproduced, post award, by the successful Bidder/Contractor to drive home a point or can be cited as basis for any change in Bid process.

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206	I	132 of 172	SCHEDULE 4. (3)  No. 3 of Addendum No. 2	Payment Schedule	We have understood that if the Contractor issues his invoice when the P&E is received at Employer's site, certified by the Engineer, the payment of 90% of the Contract Price of the respective P&E will be made without submission of Bank Guarantee. But the Sl. No. 3 of Addendum No. 2 does not clearly direct that way.  We request your good office to kindly revise this clause to clearly reflect the above understanding.	In this direction, please refer Sl. No. 1 of Addendum No. 5
207	I	134 of 172	General Conditions 18.4  no-116 of Response to Queries	Insurance for Contractor's Personnel	To obtain the quotation for the insurance as per GC 18.4 and to appropriately indemnify the Employer's and Engineer's personnel under such insurance during the execution of the Works, we need below information.	The para 2 of the GC sub Clause 18.4 may be referred.  The Contractor shall indemnify Employer and Engineers against any claims, losses, damages & Expenses arising out of sickness, disease or death of the personnel employed by the Contractor.

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					<p>1) Maximum numbers of personnel of the Employer and the Engineer to be covered by the insurance</p> <p>2) Position and range of salary of the above personnel</p> <p>In case of no disclosure of the above information, we cannot be liable for any claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any personnel of the Employer and the Engineer. We request your good office to publish the information to the bidders.</p>	<p>Under the sub Clause, Employer’s Personnel are not required to be insured.</p> <p>Hence no change is contemplated</p>
208	II	115 of 172	17.6 No. 9 of Addendum No. 1 No. 119 of Response to Queries	Limitation of Liability	<p>We understand that the word “supplied” was added by no.9 of Addendum No. 1 to make the Contractor’s total liability zero where no P&amp;E has been supplied at the time of the relevant claim by the Employer.</p> <p>But at the same time, the words mentioned in the no.9 of Addendum no.1 saying that “Supplement this Sub-Clause with the following” confuses how the additional words should be understood together with GC17.6. For example, limitation of liability should be subject to the various carve outs (Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employers Equipment and Free-Issue Material], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property</p>	In this direction, please refer Sl. No. 2 of Addendum No. 5

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					<p>Rights]) but the current wording does not properly and clearly set this out.</p> <p>In order to address the above points, we, therefore, would suggest your good office to delete and replace in its entirety the PC for GC 17.6 as set out below:</p> <p><i>In Sub-Clause 17.6, the words “the sum stated in the Particular Conditions or (if a sum is not so stated) the Accepted Contract Amount” in the penultimate sentence shall be deleted and replaced with the following:</i></p> <p><i>“100% of the value of the P&amp;E supplied at the time of the relevant claim by the Employer, provided always that, the Contractor’s total liability under this Contract for the damages suffered or incurred by the Employer in respect of specific P&amp;E shall not exceed the unit price of that P&amp;E.”</i></p>	
209	II	114 of 172	14.9 (b) No. 120 of Response to Queries	Payment of Retention Money	<p>Considering that the first half of retention money is the security for the Employer until taking over the P&amp;E by Section, and the second half is for the potential defects for each P&amp;E, we believe that the release of the second half after the expiry of Defects Notification Period for each P&amp;E will not cause any harm to the Employer. As your good office has already split the Permanent Works into sections for the early payment of retention money,</p>	In this direction, please refer Sl. No. 3 of Addendum No. 5

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					<p>payment of both first and second half of retention money on each P&amp;E is in line with such concept.</p> <p>We understand that the Contractor has the option to receive the retention payment by the submission of Bank Guarantee but we consider that the Bank Guarantee should also be returned when the Defect Notification Period of each P&amp;E is expired, which will not be realized by the current sub-clause.</p> <p>We once again request your good office to amend this clause as follows (the underlined is the suggested amendment) so that the second half of retention money for the P&amp;Es without defect will not be unreasonably withheld and the Contractor can manage the cash flow and realize the smooth contract execution which is also the benefit for the Employer.</p> <p>“The outstanding balance of the retention money shall be paid after the expiry date of the Defect Notification Period of <u>each unit</u> of the P&amp;E.”</p>	
210	II	N.A.	11.9 of GC	Performance Certificate	<p>We understand that the “Work” cannot be split in case the project requires the integrated testing and commissioning work for the entire project such as CTP1&amp;2 and EMP4. But in case of this PEP6, we understand that the Work can be split into 22 types of P&amp;E as the</p>	No change is contemplated.

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					<p>sub-clause 10.2 of PC (page 109/172 of Volume 1) termed each P&amp;E as Part of the Works.</p> <p>From the technical viewpoints, those P&amp;Es do not have close technical interface among them, and it is similar with a simple procurement project different from complete EPC-based project such as EMP4. It therefore has no technical issues in case if the Performance Certificate can be issued for each P&amp;E or each Cost Centre.</p> <p>We would like your good office to kindly amend the second paragraph of GC11.9 as follows so that the Performance Certificate per P&amp;E will be issued after the expiry of Defect Notification Period of such P&amp;E.</p> <p>“The Engineer shall issue the Performance Certificate within 28 days after the expiry date of the Defects Notification Periods of <u>each Cost Centre...</u>”</p>	
211	II	103 of 172 17 of 223	1.1.6 14.1 No. 7 & 29 of Addendum No. 1 No. 6 of	Other Definitions  Receipt of the P&E at site	<p>We would like your good office to insert the definition of “Employers facility”, which is defined as TMD at Saradhana as per the No. 29 of Addendum No. 1, into this clause as follows (the underlined is the suggested amendment) to avoid any confusion.</p> <p>Replace 1.1.6 (Other Definitions) as follows:</p>	In this direction, please refer Sl. No. 4 of Addendum No. 5

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			Addendum No. 2		Site means the Employer's facility where the Permanent works (Plant and equipment) are to be delivered. <u>Employer's facility means the Track Machine Depot (TMD) at Saradhana station of WDFC rail network.</u>	
212	II	105 of 172	2.1	Right of Access to the Site	The Contractor shall be given the Right to Access to the Site, where is Employer's facility defined as TMD at Saradhana to facilitate the commissioning work, Site Acceptance Test, Training and compliance of the Defect Notification Period, by the Employer. In addition, the Contractor cannot evaluate the detail procedure for the installation of P&E and physical constraints between access road and the installation point. Deletion of this clause is critical for us and it would have the negative impact on the smooth execution of the contract.  We would like your good office to kindly understand the above and request your good office to restore this clause.	In this direction, please refer Sl. No. 5 of Addendum No. 5
213	II	109 of 172	8.4	Extension of Time for Completion	The Contractor shall be given the right to claim the Extension of Time and additional cost due to exceptionally adverse climatic conditions, which is unforeseeable and has not been considered in the bid price. We believe this right enables the Contractor to smoothly recover the Work after the occurrence of such adverse climate and it will be the benefit for the	No change is contemplated.

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					<p>Employer.</p> <p>We would like your good office to kindly understand the above situation and request your good office to restore this sub-clause.</p>	
214	II	114 of 172	17.3	Employer's Risk	<p>The Contractor shall be given the right to claim the Extension of Time and additional cost due to forces of nature, which is unforeseeable and not considered in the bid price. We believe this right enables the Contractor to smoothly recover the Work after the occurrence of such adverse climate and it will be the benefit for the Employer.</p> <p>We would like your good office to kindly understand the above situation and request your good office to restore this sub-clause.</p>	No change is contemplated.
215	II	167 of 172	Specialist and Other Manufacturer's Warranty (D)  No-12 of Addendum no-1  No. 8 of Addendum No. 2	Specialist Warranty	<p>We request your good office not to reject the Other Manufacturer(s) proposed by the Bidder, provided that such proposed Other Manufacturer(s) passed the technical evaluation. Since the Contractor cannot instruct the Other Manufacturer(s) to commence their work until the consent of the Engineer is obtained, it may cause the delay of the execution of the specific P&amp;E supplied by such Other Manufacturer(s). Further, the Bidder shall propose the said Other Manufacturer(s) based on</p>	This provision helps the Bidder to propose the Other Manufacturer to enter into a sub-contract after signing of the Contract. Once the Other Manufacturer is evaluated in the Bid, there is no reason for rejecting the proposed Other Manufacture unless there are exception reasons identified while giving consent.

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					<p>their experience etc. and other potential suppliers are disqualified by the Bidder itself based on his evaluation, so we believe that the no-consent of the Engineer for the Other Manufacturer(s) will not cause any harm to the Employer.</p> <p>We request your good office to delete this sub-clause (D) for the smooth execution of the Project.</p>	
216	II	109 of 172	11.1	Completion of Outstanding Work and Remedying Defects	<p>We will dispatch the person in charge for the defect within 10 or 15 calendar days (as amended by no-12 of Addendum no-3) in case of non-functioning defects or other defects respectively after our receipt of the notice notifying the defects. We will pay the penalty of INR 5,000/day in case of the delay of the dispatch of the person in charge for the defects.</p> <p>Based on the above understanding, we would like your good office to kindly insert the following sentence for the clear understanding on the penalty.</p> <p>“Penalty will only be charged for the days of delay of the dispatch of the personnel from the Contractor, Specialist/Other Manufacturer(s) or agents appointed by the Contractor, Specialist/Other Manufacturer(s).”</p>	In this direction, Please refer Sl. No. 7 of Addendum No. 5



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217	II	99 of 172	14.2	Advance Payment	<p>We have understood that the cash-flow requirement to be demonstrated by Form-FIN 3 as per 3.2(c) (iii) of Financial Criteria and JICA's procurement guideline which shows that advance payment is usually expected to lie between 10 and 15% of the contact price. But we would like your good office to kindly understand that the European manufacturers usually request the employer for the 30% of advance payment. In case of the supply of non-ready-made and first-ever products in India, it includes a cost factor for design and engineering to develop its P&amp;E from scratch in order for Specialist/Other Manufacturers to meet the technical requirements of this Project.</p> <p>We would like your good office to pay 30% of advance payment, provided that the payment timing of first half (15%) and second half (15%) will not be changed, so that the Contractor is not required to add the financial charges for the additional payment of the Advance Payment to the Specialist/Other Manufacturers.</p> <p>We understand that JICA's procurement guideline does not necessarily prohibit the Employer from setting the high percentage of advance payment.</p>	No change is contemplated.

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218	II	19 of 223	15 e)	Inspecting Officials-powers of rejection	<p>We understand that the re-test may be inspected by the Engineer and the Contractor needs to bear the travel expenses and lodging cost of the Engineer, however we cannot accept existing clause since the number of the officials and days for lodging are not specified and the required expense would be unlimitedly accumulated and cannot take those cost into consideration as the contingency cost at the time of bid submission.</p> <p>We would like your good office to kindly understand the above and amend this clause as follows (the underlined is the suggested amendment).</p> <p><u>“In case a P&amp;E has to be re-tested, the entire cost involved in re-testing shall be borne by the Contractor. The Contractor shall bear the boarding expense (economy class) and lodging expense for the officials of the Engineer for the same numbers who attended the original test and for the same days of the original test at a maximum as per sub-clause 13.7 of Volume II (page 16 of 223). The Expenses for the officials of the Engineer and the days in excess of the original test shall be borne by the Employer.</u></p>	In this direction, please refer Sl. No. 8 of Addendum No. 5
219	II	22 of 223	18.2.1	Training	Existing clause does not specify the number of trainings, locations of trainings, number of officials and days for lodging, which means that the	No change is contemplated.

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					<p>required expense would be unlimitedly accumulated as an out-of-pocket cost outside the Contract Price. We cannot be evaluated such insecure costs at the time of Bid Submission.</p> <p>We can provide with the required trainings at manufacturers' premises; however it is impossible for the Contractor to bear the expense of the travel, boarding, lodging for the personnel of the Employer without its ceilings due to the above reason.</p> <p>We would like your good office to kindly understand the above situation and request your good office to amend this clause so that necessary cost for travel and lodging shall be borne by the Employer the same as No.13 of Addendum No.2.</p>	
220	II	108 of 172	8.2 No. 4 of Addendum No. 2	Time for Completion	<p>No. 4 of Addendum No. 2 inserts the following at the bottom of PC 8.2.</p> <p>“Time for Completion of each Section shall be on receipt and Issue of Taking Over Certificate of the last P&amp;E.”</p> <p>We understand that Taking Over Certificate will be issued on each P&amp;E. It is also self-explanatory that the Time for Completion of each Section shall be on the issuance of Taking Over Certificate of all P&amp;Es in one Section, i.e. issuance of Taking Over Certificate of the last P&amp;E will be at the Time for</p>	<p>Time for Completion is a defined term. The scope of Work has been distributed across five Sections i.e. Section-A to Section E.</p> <p>While the time of Completion shall be in terms of PC Sub Clause 8.2. However, the Time of Completion for a section can only be marked by the issuance of Taking over Certificate for the Last P&amp;E of that section.</p> <p>No Change is contemplated.</p>

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					<p>Completion of the Section.</p> <p>This query is to clarify the reason and background why this wording by No. 4 of Addendum No. 2 was inserted under PC 8.2 without our query related to PC8.2.</p>	
221	II	79 of 172		Form of Bid Security	<p>Please kindly insert the below sentence at the bottom of the name of Beneficiary for the reference of the Employer stated in the (b) of 3<sup>rd</sup> paragraph.</p> <p>“Hereinafter called the Employer”</p>	In this direction, Please refer Sl. No. 9 of Addendum No. 5
222	II	79 of 172		Form of Bid Security	<p>Please kindly insert the below sentences to avoid any misunderstanding on the transfer/assignment of the guarantee and the management of the original guarantee.</p> <p>“This guarantee is not transferable or assignable. This guarantee must be returned to the Bidder as soon as it expires”</p> <p>Further, we and the banks in discussion for the issuance of the Bid Security have noted the amendment to the Sec. 28 of Indian Contract Act. executed in 1997 which prevents the banks from requesting the return of the original bank guarantees for 30 years in case that the beneficiary is the governmental enterprise and subsequent issuance of Circular LA.C/14-61/40 dated 30</p>	<p>Conditions for ‘this guarantee is not transferable or assignable.....expires’ are provided in the URDG 758 to which the Bid Security is subjected in accordance with the last paragraph.</p> <p>Please, also, refer Sl. No. 9 of Addendum No. 5</p>

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					<p>September 1997 issued by the Indian Banks' Association, as we enclosed. We would like your good office to insert the following sentences considering the aforesaid concerns.</p> <p>“Notwithstanding anything contained herein;</p> <p>a) our liability under this guarantee shall not exceed [insert the amount of the guarantee] only;</p> <p>b) this guarantee shall be valid and remain in force up to and including [insert the expiry date]; and</p> <p>c) we are liable to pay the guaranteed amount or any part thereof under this guarantee only and only if the beneficiary serve upon us a written claim or demand on or before [insert the expiry date]”</p>	
223	II	161 of 172		Performance Security	<p>Please kindly insert the below sentences to avoid any misunderstanding on the transfer/assignment of the guarantee and the management of the original guarantee.</p> <p>“This guarantee is not transferable or assignable. This guarantee must be returned to the Bidder as soon as it expires”</p> <p>Further, we and the banks in discussion for the issuance of the Performance</p>	<p>Conditions for ‘this guarantee is not transferable or assignable.....expires’ are provided in the URDG 758 to which the Bid Security is subjected in accordance with the last paragraph.</p> <p>Please, also, refer Sl. No. 9 of Addendum No. 5</p>

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					<p>Security have noted the amendment to the Sec. 28 of Indian Contract Act. executed in 1997 which prevents the banks from requesting the return of the original bank guarantees for 30 years in case that the beneficiary is the governmental enterprise and subsequent issuance of Circular LA.C/14-61/40 dated 30 September 1997 issued by the Indian Banks' Association, as we enclosed. We would like your good office to insert the following sentences considering the aforesaid concerns.</p> <p>“Notwithstanding anything contained herein;</p> <p>a) our liability under this guarantee shall not exceed [insert the amount of the guarantee] only;</p> <p>b) this guarantee shall be valid and remain in force up to and including [insert the expiry date]; and</p> <p>c) we are liable to pay the guaranteed amount or any part thereof under this guarantee only and only if the beneficiary serve upon us a written claim or demand on or before [insert the expiry date]”</p>	
224	II	162 of 172		Advance Payment Security	Please kindly insert the below sentences to avoid any misunderstanding on the transfer/assignment of the guarantee and the management of the original guarantee.	<p>Conditions for ‘this guarantee is not transferable or assignable.....expires’ are provided in the URDG 758 to which the Bid Security is subjected in accordance with the last paragraph.</p> <p>Please, also, refer Sl. No. 9 of Addendum No. 5.</p>

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					<p>“This guarantee is not transferable or assignable. This guarantee must be returned to the Bidder as soon as it expires”</p> <p>Further, we and the banks in discussion for the issuance of the Advance Payment Security have noted the amendment to the Sec. 28 of Indian Contract Act. executed in 1997 which prevents the banks from requesting the return of the original bank guarantees for 30 years in case that the beneficiary is the governmental enterprise and subsequent issuance of Circular LA.C/14-61/40 dated 30 September 1997 issued by the Indian Banks’ Association, as we enclosed. We would like your good office to insert the following sentences considering the aforesaid concerns.</p> <p>“Notwithstanding anything contained herein;</p> <p>a) our liability under this guarantee shall not exceed [insert the amount of the guarantee] only;</p> <p>b) this guarantee shall be valid and remain in force up to and including [insert the expiry date]; and</p> <p>c) we are liable to pay the guaranteed amount or any part thereof under this guarantee only and only if the beneficiary serve upon us a written claim or demand on or before [insert</p>	

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					the expiry date]”	
225	I	163 of 172		Demand Guarantee	<p>Please kindly insert the below sentences to avoid any misunderstanding on the transfer/assignment of the guarantee and the management of the original guarantee.</p> <p>“This guarantee is not transferable or assignable. This guarantee must be returned to the Bidder as soon as it expires”</p> <p>Further, we and the banks in discussion for the issuance of the Demand Guarantee have noted the amendment to the Sec. 28 of Indian Contract Act. executed in 1997 which prevents the banks from requesting the return of the original bank guarantees for 30 years in case that the beneficiary is the governmental enterprise and subsequent issuance of Circular LA.C/14-61/40 dated 30 September 1997 issued by the Indian Banks’ Association, as we enclosed. We would like your good office to insert the following sentences considering the aforesaid concerns.</p> <p>“Notwithstanding anything contained herein;                      a) our liability under this guarantee shall not exceed [insert the amount of the guarantee] only;</p>	<p>Conditions for ‘this guarantee is not transferable or assignable.....expires’ are provided in the URDG 758 to which the Bid Security is subjected in accordance with the last paragraph.</p> <p>Please, also, refer Sl. No. 9 of Addendum No. 5.</p>



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					<p>b) this guarantee shall be valid and remain in force up to and including [insert the expiry date]; and</p> <p>c) we are liable to pay the guaranteed amount or any part thereof under this guarantee only and only if the beneficiary serve upon us a written claim or demand on or before [insert the expiry date]”</p>	
226	I	171 of 172		Form of Retention Money Guarantee	<p>Please kindly insert the below sentences to avoid any misunderstanding on the transfer/assignment of the guarantee and the management of the original guarantee.</p> <p>“This guarantee is not transferable or assignable. This guarantee must be returned to the Bidder as soon as it expires”</p> <p>Further, we and the banks in discussion for the issuance of the Retention Money Security have noted the amendment to the Sec. 28 of Indian Contract Act. executed in 1997 which prevents the banks from requesting the return of the original bank guarantees for 30 years in case that the beneficiary is the governmental enterprise and subsequent issuance of Circular LA.C/14-61/40 dated 30 September 1997 issued by the Indian Banks’ Association, as we enclosed. We would like your good office to insert the following sentences considering the</p>	<p>Conditions for ‘this guarantee is not transferable or assignable.....expires’ are provided in the URDG 758 to which the Bid Security is subjected in accordance with the last paragraph.</p> <p>Please, also, refer Sl. No. 9 of Addendum No. 5.</p>

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					<p>aforesaid concerns.</p> <p>“Notwithstanding anything contained herein;</p> <p>a) our liability under this guarantee shall not exceed [insert the amount of the guarantee] only;</p> <p>b) this guarantee shall be valid and remain in force up to and including [insert the expiry date]; and</p> <p>c) we are liable to pay the guaranteed amount or any part thereof under this guarantee only and only if the beneficiary serve upon us a written claim or demand on or before [insert the expiry date]”</p>	