

TENDER NOTICE FOR PUBLICATION IN NEWSPAPERS

TENDER NOTICE

Government of India, Ministry of Railways, Railway Board for & on behalf of the President of India invites tender for "Design, mould development, moulding, assembly of the parts with defined colour scheme as per Rail Specification of DHR Loco Sharp Stewart Class B engine in "I" scale (1:32) with pedestal and packaging from capable mould makers & injection moulders"

Quantity: 10,000

Tender no. 2010/Museum/Model/DHR

Tender Document can be obtained from the office of Director, National Rail Museum, Chanakya Puri, New Delhi against payment of Rs. 3,000/- through D.D. in favour of 'Secretary Railway Board' payable at New Delhi.

Last Date of Submission: 25-May-2010 at 14:30 hrs.

Date of opening: 25-May-2010 at 15:00 hrs.

For further details refer to website www.indianrailways.gov.in, link "Railway Tenders" & then "Mechanical Engineering"

Director, National Rail Museum

Ph.011 26880939, 26881816, 23304137

भारत सरकार रेल मंत्रालय (रेलवे बोर्ड) निविदा सूचना

निविदा सं० 2010 / संग्रहालय / मॉडल / डीएचआर
निविदा जमा करने की अंतिम तिथि एवं समय 25 मई 2010, 14.30
निविदा खोलने की अंतिम तिथि एवं समय: 25 मई 2010, 15.00
मॉडल की संख्या: 10000

भारत के राष्ट्रपति के लिए एवं उनकी ओर से निदेशक, राष्ट्रीय रेल संग्रहालय, चाणक्यपुरी, नई दिल्ली-110021 रेलवे विशिष्टीकरण एवं रंग विन्यास के आधार पर डी.एच. आर. लोको शार्प स्टीवर्ट श्रेणी बी इंजन 'आई' स्केल (1:32) के मॉडल का डिजाइन, ढाँचे का विकास, मोल्डिंग, भागों की असेम्बली और पैडस्टल के साथ पैकेजिंग के लिए मोल्ड निर्माताओं और इंजेक्शन माड्यूलर्स से मुहरबंद निविदाएं आमंत्रित करते हैं।

निविदा दस्तावेज 'सचिव, रेलवे बोर्ड' के नाम रुपये 3000.00 के डिमांड ड्राफ्ट का भुगतान कर निदेशक, राष्ट्रीय रेल संग्रहालय के कार्यालय से क्रय किए जा सकते हैं।

अन्य विवरण के लिए मंत्रालय की वेबसाईट को <http://www.indianrailways.gov.in> पर Railway Tenders के Mechanical Engineering को देखें।

दूरभाष: 011-26880939, 26881816, 23304137

INVITATION

OF

EXPRESSION OF INTEREST (EOI)

AND

REQUEST FOR QUOTATIONS (RFQ)

(IN TWO-PACKET SYSTEM)

FOR

**DEVELOPMENT OF 'I' SCALED MODEL OF DHR
LOCOMOTIVE USING INJECTION MOULDING**

TENDER NO. 2010/MUSEUM/MODEL/DHR

TENDER NOTICE

OFFICE OF ISSUE:

GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD), NEW DELHI

DT. 12-APRIL-2010

Government of India, Ministry of Railways, Railway Board for & on behalf of the President of India proposes to develop plastic model of DHR locomotive against the tender mentioned below:

Description & Quantity	Tender No.	Date of Closing	Date of Opening	Tender Document available from
(1)	(2)	(3)	(4)	(5)
Design, mould development, moulding, assembly of the parts with defined color scheme as per Rail Specification of DHR Loco Sharp Stewart Class B engine in "I" scale (1:32) with pedestal and packaging from capable mould makers & injection moulders Quantity: 10,000	2010 / MUSEUM / MODEL / DHR	25-May-2010 (14:30 hrs.)	25-May-2010 (15:00 hrs.)	Office of Director, National Rail Museum, Ministry of Railways, Chanakya Puri, New Delhi - 110021

Note:

1. Details available in the tender document.
2. The price per set of documents for sale is fixed at Rs. 3,000/- only. The original tender documents are available against D.D. for this amount payable to 'Secretary, Railway Board'. Tender documents may be collected on any working day except Monday between 10:00 to 17:00 hrs. Parties requiring tender documents by post should remit Rs. 100/- extra as postal charges along with the tender cost.
3. Tender documents may also be downloaded from the Railway Board website www.Indianrailways.gov.in and following the link for Tenders under 'Mechanical Engineering'. In that case tendering firm should deposit the D.D. towards tender document cost along with the Technical offer.

(Manish Jain)
Director, NRM
Fax 011 2688 0804

OFFER FORM

Tender no. 2010 / MUSEUM / MODEL / DHR

From:

Telegraphic Address

Telephone Nos.:

(Works)

(Res.)

(Mobile)

FAX No.

To,

Director, National Rail Museum,

Ministry of Railways,

Chanakya Puri, New Delhi – 110021.

Dear Sir,

1. I / We hereby offer to develop & supply the model detailed in the tender document at the price submitted by me / us.
2. I / We agree to keep this offer valid for a period of 120 days from the date of opening and shall be bound by a communication of acceptance despatched within the prescribed limit.
3. I / We have read & understood the instructions to bidders and all the Terms & Conditions in the tender documents and undertake to comply with the same completely.

Date

Signature of Bidder

Name in Block Letters:

Capacity in which tender is signed

Signature of witness with Name & Address

INSTRUCTIONS TO BIDDER:

1. The work involves Design, Mould development, Moulding assembly and supply of the models.
2. The process will be two-packet based, in which the technical (EOI) and financial offers (Quotation) are to be submitted in separate packets. Both packets should be marked clearly giving the reference of this EOI , bidders name & address and marking as 'EOI' or 'Financial Bid'. Both these packets should than be placed in another packet duly sealed and marked on top with the Tender no. This should be deposited in the office of Director / NRM before the due date and time indicated at para 11 of these instructions. Offer received after the due date & time will not be accepted. The financial offers of only those bidders will be opened, whose technical offer is considered acceptable. After evaluation of the technical offers i.e. EOIs, Railways may redefine the scope of the work in terms of quantities etc. and invite fresh price bid if considered necessary.
3. The offers should be supported by documents wherever called for. Each and every page including attachments should be signed by the bidder or his authorised representative.
4. The offer should be valid for a period of 120 days from date of opening.
5. Tender document cost of Rs. 3,000/- is to be deposited with railways through demand draft payable to "Secretary Railway Board" at the time of purchasing the tender document. Alternatively, bidder can download the document from official web-site and deposit the cost along with the EOI.
6. The EOI should be accompanied by earnest money of Rs. 50,000/- in form of demand draft payable to "Secretary Railway Board". Offer without earnest money will not be considered and summarily rejected. The earnest money of all unsuccessful bidders shall be returned without any interest after completion of the quotation process. The earnest money of successful bidder will be adjusted in the security deposit. However, if any bidder withdraws its offer during validity, his earnest money will be forfeited.
7. Railways reserve the right to
 - Accept any offer or reject all without assigning any reason.

- Negotiate with any bidder.
8. The offer must contain details of contact person, phone & mobile numbers, Fax number / e-mail i.d. to be used for communication in connection with this EOI. Any communication sent at these details will be understood to have been delivered to the bidder.
 9. Conditional offers will not be accepted.
 10. The steps in evaluation will be as under:
 - Evaluation of EOI to shortlist bidders who meet the Qualification criteria,
 - Opening of Price bids of Short-listed bidders,
 - Evaluation of Price bid and placement of Order on successful bidder(s),
 - Submission of Drawings by successful bidder(s),
 - Approval of drawings by railways,
 - Submission of prototype by successful bidder(s),
 - Approval of prototype by railways,
 - Mass production and supply by successful bidder(s).
 11. The tenders must reach the office of Director, National Rail Museum, Chanakya Puri, New Delhi latest by the closing time indicated in Tender Notice. These will be opened as per opening time indicated in tender notice in presence of authorised representatives of bidders who chose to attend the opening.
 12. The tender documents include the following in addition to these instructions:
 - Terms & Conditions for EOI,
 - Terms & Conditions for RFQ,
 - General Conditions of Contract applicable to the tender and resultant contract.

TERMS & CONDITIONS FOR 'EXPRESSION OF INTEREST':

Applications are invited for development (Design, mould development, moulding, assembly of the parts with defined color scheme as per Rail Specification) of DHR Loco Sharp Stewart Class B engine in "I" scale (1:32) with pedestal and packaging from capable mould makers & injection moulders.

QUALIFYING CRITERIA:

The intending bidders satisfying the following conditions should apply to express their interest with requisite information / supporting documents in duplicate to the Director, National Rail Museum, New Delhi.

- 1) The bidder should have the facility of mould development AND/OR of injection moulding in-house. The capability should also include 3D-designing capability for model in-house OR out-sourced. The bidder should submit documentary proof of the facilities claimed. These may be verified by railways by visiting the site. The bidders should also submit completion certificates from customers for similar jobs executed in past.
 - a. Facility of mould developer shall mean in-house design & tool making facility. The software used should be high - performance digital tools like Think 3 or equivalent to design the final product. In case designing is outsourced, the name and capabilities of designing organisations are to be elaborated.
 - b. Facility of Injection Moulding shall mean that the model manufacturer should have in-house facility for injection moulding for the product tendered.
 - c. Designing capability shall mean that the designing agency will have the capability to develop CAD Drawings in 3D format with a high level of detailing with the help of dimensions from the actual DHR loco engines (No drawings are available) placed at Rail Bhawan, New Delhi/National Rail Museum, New Delhi/Darjeeling Himalayan Railway, Darjeeling.

The decision of Railways regarding qualification of bidders shall be final and binding.

- 2) Drawings of the 3-D format so developed by successful bidder (s) shall be approved by Railways and these will become property of Railways thereafter. No changes will be made to these without fresh approval by Railways. Drawings are to be submitted within 30 days of placement of order by railways.
- 3) The vendor should also have the capability to provide a Rapid Prototyped model of the assembly for Railways to evaluate the product part detailing. This will need to be provided within 30 days of ordering by railways.
- 4) Mass production by successful bidder(s) will start only after prototype approval. The delivery will be made as under:

- First lot of 2500 models within 60 days of prototype approval,
 - Balance five lots of 1500 each at intervals of 6 months from the date of first supply.
- 5) The Copy-rights for the design of model shall remain vested exclusively with Indian Railways. However the successful bidder (s) will be allowed to use it for direct sales of models in market for 3 years if specifically desired by them against payment of Royalty. The Royalty payment will be made at the start of each year in 3 instalments of 40%, 30% & 30%. For example, if the prototype is approved in June, 2010, the royalty payment instalments are to be given in July, 2010, July, 2011 & July, 2012.

TECHNICAL SPECIFICATIONS:

The specifications and technical requirements are as under:

- 1) The model should be made in such a manner that it can be retrofitted with motor, battery, lights, horn assembly & switches for motorised movement at a later date without any modifications to the existing design.
- 2) The materials used should be virgin Food grade PP and / or Engineering Thermoplastic Polycarbonate from reputed material manufacturing companies (Sabic Innovative Plastics, Reliance Industries etc.).
- 3) The minimum weight of the model (excluding pedestal) should be 660 gms. for "I" scale.
- 4) Painted parts, if any must be lead free (Certified by NABL Accredited labs).
- 5) The "I" scale model will require at least 30 different parts. These will be primarily made of plastic, supplemented by Aluminium, CRCA mild steel sheet and stainless steel.
- 6) The enclosed pictures indicate the detailing and various parts required for "I" scale. This is only an illustration and the bidders should submit their individual proposal in the EOI.
- 7) The model will have to be encased in a Transparent casing made of acrylic using 'thermo-forming'.
- 8) The colours of various parts will include Green, Red, Blue, Black & Silver as per original DHR loco scheme.

- 9) The model will be scaled with high finish and moving transition parts, resembling with actual working.
- 10) The model will be placed on Wooden pedestal using rail on sleepers.
- 11) The model will be delivered suitably packaged as done for exports.

TERMS & CONDITIONS FOR 'REQUEST FOR QUOTATION':

The price offer should be given duly taking into consideration the following:

- 1) Copy Right shall be vested exclusively with Indian Railways.
- 2) Ownership of mould shall be with vendor,
- 3) Sale right shall be with Railways. However on specific request of vendor, Railways can allow direct sales on payment of royalty as detailed in para 5 of qualifying criteria.
- 4) The price shall remain frozen for at least 3 years.
- 5) Initial order shall be for 10,000 pieces. However, Railways can place repeat orders for additional quantity within the 3-year period at the original cost.
- 6) The order will be placed for the entire quantity on a single bidder only.
- 7) The financial ranking of offers will be decided based on total all inclusive price of 10000 model minus the total royalty payment offered by the bidder. However if this figure works out to be same for two or more bidders, offer with lowest supply price of 10000 models will be reckoned as lowest among them without considering the royalty payment amount.
- 8) The Security deposit (SD) for the contract will be 5% of the contract value (viz. The order price for 10000 models without considering the royalty payment). For this purpose, the earnest money deposited by the successful bidder with the tender will be adjusted as part of security deposit and balance amount deducted from supply bills @10% of the bill amount (excluding taxes) till the Security Deposit amount is reached. No other mode of SD will be acceptable. The security deposit will be returned without interest after successful completion of the contract.
- 9) In addition to the SD defined above, the successful bidder shall be required to submit a Performance Guarantee in the form of an irrevocable Bank Guarantee amounting to 5% of the contract value (viz. The order price for 10000 models without considering the royalty payment). This BG will be submitted prior to signing the contract agreement and will be valid for the contract period plus 60 days. This BG will be returned after successful completion of contract.

10) In case of the contract getting rescinded, the SD will be forfeited and Performance BG will be en-cashed by railways and balance work will be done by railways separately. In such a case, the original contractor will be barred from participating in the tender for the work again.

GENERAL CONDITIONS OF CONTRACT

1.0 COMMUNICATION AND LANGUAGE OF CONTRACT

1.1. Communication to be in writing

All notices, communications, references and complaints by either party to the Contract shall be in writing in English or Hindi. Communication from only authorised representative of the Contractor shall be entertained.

1.2. Language of Contract

The Contract document shall be drawn up in English.

2.0 LAWS GOVERNING THE CONTRACT

The Contract shall be governed by the laws in force in India.

3.0 CONTRACTOR'S UNDERSTANDING

The Contractor shall be deemed to have satisfied himself, before tendering, as to the correctness and sufficiency of his tender for the works and of the rates and prices stated in the Bill of Quantities, all of which shall except in so far as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution, completion and maintenance of works.

4.0 INDEMNITY BY THE CONTRACTOR

Indemnity against all actions of Contractor

The Contractor shall hold and save harmless and indemnify the Client/Employer/Engineer and their employees, from all actions, suits, proceedings, loss, costs, damages, charges, claims and demands of every nature and description brought against or recovered from the Client/Employer/Engineer and their employees by reason of any act or omission of the Contractor and/or his representative and/or his Employees and/or his sub-contractors in the execution of the works or in the guarding of the same. All the sums payable by Client/Employer/Engineer by way of compensation under any of these conditions, shall be recovered from the dues of the Contractor, without reference to the

actual loss or damage sustained, and whether or not any damage shall have been sustained.

Indemnity against all Claims of Patent rights and Royalties

The Contractor shall hold and save harmless and indemnify the Client/Employer/Engineer, his officers and Employees from and against all claims and proceedings for or on account of infringement by the Contractor of copyright, any patent rights, design, trademark or name, secret process, patented or unpatented invention, articles or appliances manufactured or used for or in connection with the works and from and against all claims, proceedings, costs, damages, charges, and expenses whatsoever in respect thereof or in relation thereto. The Contractor shall pay all royalties, taxes, rent and other payments or compensation, if any, for getting the materials required for the works and due fulfillment of the contract and indemnify Client/Employer/Engineer against any claims in this regard.

5.0 MATERIALS AND WORKMANSHIP

5.1. Material and workmanship as per Specifications

i. All materials and workmanship shall be as per the contract and in accordance with the Engineer's instructions and shall be subjected to such tests as the Engineer may direct. The Contractor shall provide all such assistance, instruments, machines, labour and materials required for examining, measuring and testing any work and materials used. The Contractor shall supply samples of material before incorporating in the works for testing as may be selected and required by the Engineer.

ii. The sources of materials to be used in the works shall be intimated to the Engineer and are subject to his approval.

5.2. Supply of sample

All samples shall be supplied by the Contractor at his own cost.

5.3. Cost of tests of Materials and Workmanship

The cost of carrying out any tests in a reputed laboratory as acceptable to the Engineer shall be borne by the Contractor except for the materials to be supplied by the Engineer.

6.0 DELAY AND EXTENSION OF CONTRACT PERIOD

6.1. The time allowed for execution and completion of the works or part of the works as specified in the contract, shall be essence of the contract on the part of the Contractor.

6.2. As soon as it becomes apparent to the Contractor, that the work and / or portions thereof (required to be completed earlier), cannot be completed within the period(s) stipulated in the contract, or the extended periods granted, he shall forthwith inform the Engineer and advise him of the reasons for the delay, as also the extra time required to complete the works and / or portions of work, together with justification therefor. In all such cases, whether the delay is attributable to the Contractor or not, the Contractor shall be bound to apply for extension well within the period of completion/extended period of completion of the whole works and / or portions thereof.

6.3. Extension due to modifications

If any modifications are ordered by the Engineer or site conditions actually encountered are such, that in the opinion of the Engineer the magnitude of the work has increased materially, then such extension of the stipulated date of completion may be granted, as shall appear to the Engineer to be reasonable.

6.4. Delays not due to Employer/Contractor.

If the completion of the whole works (or part thereof which as per the contract is required to be completed earlier), is likely to be delayed on account of:

- Any force majeure event referred to in Clause 71.0 or
- Delay on the part of other Contractors engaged directly by the Client/Employer, on whose Progress the performance of the Contractor necessarily depends or
- Any relevant order of court or
- Any other event or occurrence which, according to the Engineer is not due to the Contractor's failure or fault, and is beyond his control;

The Engineer may grant such extensions of the completion period as in his opinion is reasonable.

6.5. Delays due to Employer/Engineer.

In the event of any failure or delay by the Employer/Engineer in fulfilling his obligations under the contract, then such failure or delay, shall in no way affect or vitiate the contract or alter the character thereof; or entitle the Contractor to damages or compensation thereof but in any such case, the Engineer shall grant such extension or extensions of time to complete the work, as in his opinion is / are reasonable.

6.6. Delays due to Contractor and Liquidated Damages:

If the delay in the completion of the whole works or a part of the works, beyond stipulated completion period, is due to the Contractor's failure or fault, and the Engineer feels that the remaining works or the portion of works can be completed by the Contractor in a reasonable and acceptable short time, then, the Engineer may allow the Contractor extension or further extension of time, for completion, as he may decide, subject to the following:

- a. Without prejudice to any other right or remedy available to the Engineer, recover by way of liquidated damages and not as penalty, a sum equivalent to quarter of one percent (0.25%) of the contract value of the works, for each week or part of a week the Contractor is in default.
- b. If the delay relates only to a portion of the works with a separate and earlier completion period, the contract value shall be restricted to the cost of that portion of the works only.
- c. The recovery on account of compensation for delay shall be limited to 5% of the contract value of the works, or the portion of the works, as the case may be.

The recovery of such damages shall not relieve the Contractor from his obligation to complete the work or from any other obligation and liability under the contract.

7.0 DETERMINATION OF CONTRACT DUE TO CONTRACTOR'S DEFAULT

7.1 Conditions leading to determination of contract

- i) If the Contractor

1. becomes bankrupt or insolvent, or,

2. makes arrangements with or assignment in favour of his creditor, or agrees to carry out the contract under a committee of inspection of his creditors or
3. being a company or corporation goes into liquidation by a resolution passed by the Board of Directors/ General Body of the share-holders or as a result of court order (other than voluntary liquidation for the purpose of amalgamation or reconstruction) ; or
4. has execution levied on his goods or property or the works, or
5. assigns or sublets the contract or any part thereof otherwise than as provided for under conditions of this contract, or
6. abandons the contract, or
7. persistently disregards instructions of the Engineer or contravenes any provisions of the contract, or
8. fails to adhere to the agreed programme of work or fails to complete the works or parts of the works within the stipulated or extended period of completion, or is unlikely to complete the whole work or part thereof within time because of poor record of progress; or
9. fails to remove materials from the site, or pull down and replace work, after receiving notice from the Engineer to the effect that the said materials or works have been condemned or rejected, or
10. fails to take steps to employ competent and/ or additional staff and labour, or
11. fails to afford the Engineer or his representative proper facilities for inspecting the works or any part thereof, or

- 12.promises, offers or gives any bribe, commission, gift or advantage, either himself or through his partners, agents or servants to any officer or employee of the Engineer or the Employer, or to any person on their behalf, in relation to obtaining or execution of this or any other contract with the Employer, or
- 13.suppresses or gives wrong information while submitting the tender.

In any such case the Engineer on behalf of the Employer may serve the Contractor with a notice in writing to that effect and if the Contractor does not, within 7 days after delivery to him of such notice, proceed to make good his default in so far as the same is capable of being made good, and carry on the work or comply with such instructions as aforesaid to the entire satisfaction of the Engineer, the Employer shall be entitled after giving 48 hours notice in writing to terminate the contract, as a whole or in part or parts (as may be specified in such notice).

ii) In such a case of termination, the Employer/Engineer may adopt the following courses

1. Take possession of the site and any materials, constructional plants, equipment, stores, etc.
2. Measure up whole or part of the work from which the Contractor has been removed, and get it completed by another Contractor. The manner and method in which such work is to be completed, shall be entirely at the discretion of the Engineer whose decision shall be final and binding.
3. Carry out the whole or part of the work from which the Contractor has been removed, by the employment of the required labour, materials, plants and equipment and other resources.

7.2 Entitlement of Employer/Engineer:

In cases described in sub-clause 7.1 (ii) above, the Employer/Engineer shall be entitled to:

4. Forfeit the whole or such portion of the SD & Performance Security amount, as he may deem fit.

8.0 DETERMINATION OF CONTRACT ON EMPLOYER/ENGINEER'S ACCOUNT:

The Employer/Engineer shall be entitled to determinate the contract, at any time, should, in the Employer/Engineer's opinion, the cessation of works becomes necessary, owing to paucity of funds or due to court orders or from any other cause whatsoever. Notice in writing from the Employer/Engineer of such termination and reasons therefore, shall be conclusive evidence thereof. In such a case, the value of approved materials actually brought to the site and of work done upto date by the Contractor, shall be paid for in full by the Employer/Engineer, at rates specified in the contract. If rates for any materials or items of work are not available in the contract, these shall be fixed by the Engineer in terms of clause 59.

In case of determination of contract on Employer/Engineer's account as described above, the claims of the Contractor towards expenditure incurred by him in the expectation of completing the whole works, shall be admitted and considered for payment as deemed reasonable and are supported by the documents/vouchers etc. to the satisfaction of Employer/Engineer. The decision of the Employer/Engineer on the necessity and propriety of such expenditure shall be final and conclusive.

However, the Contractor shall have no claim to any payment of compensation or otherwise, on account of any profit or advantage which he might have derived from the execution of the work in full but which he could not in consequence of determination of contract under this clause.

Plant, Equipment and tools as well as unutilised materials supplied by the Employer/Engineer to the Contractor shall be returned in acceptable conditions at Engineer's depot at Contractor's cost. The Engineer shall be entitled to recover the cost of unreturned Plant, Equipment and tools as well as unaccounted materials from the Contractor. The amount to be recovered from the Contractor shall be decided by the Engineer whose decision in this regard shall be final and binding. The Contractor shall have to pay back unrecovered portion of advances made to him, together with accrued interest thereon. In case, the Contractor defaults, the Engineer shall recover the amounts from any payment due to the Contractor, or from the Performance Security or by encashing the Bank Guarantees given by the Contractor for securing the advances or for any other purpose. This is without prejudice to other remedies available to the Employer/Engineer.

9.0 DEATH OF CONTRACTOR/ PARTNER

If the Contractor is an individual or a sole proprietary concern, and the individual or a sole proprietor dies, or if the Contractor is a partnership concern and one of the partners dies, in that case, unless the Employer/Engineer is satisfied that the legal representative of the individual

Contractor or of the sole proprietor, as the case may be, or in the case of partnership firm, all surviving partners are capable of carrying out and completing the contract, the Employer/Engineer shall be entitled to rescind the contract as to its incomplete part. In that event, the Employer/Engineer shall not be liable to pay any compensation to the legal heirs of the deceased Contractor and / or to the surviving partners of the Contractor's firm, on account of such cancellation of contract. The Engineer's decision as to whether the legal representatives of the deceased Contractor or surviving partners of the Contractor are capable of carrying on and completing the contract shall be final and binding on the parties. Provided further that the legal representatives of the deceased Contractor or the surviving partners shall also not be liable to pay any damages, alleged or actually suffered by the Employer/Engineer, in respect of incomplete part of the contract. Any liability incurred by the deceased Contractor, or by the deceased partner of the contracting firm, before his death, shall be recovered from the legal representatives of the deceased Contractor or from the surviving partners of the said contracting firm as the case may be.

10.0 MODIFICATION TO CONTRACT

In the event of any provisions of the contract requiring to be modified after the agreement has been signed, the modifications shall be made in writing and signed by the Employer/Engineer and the Contractor or his authorised representative. Such modifications will not be effective until the same have been signed by both the parties. Any verbal or written arrangements for abandoning, modifying extending, reducing or supplementing the contract, or any of the terms thereof shall be deemed to be provisional and shall not be binding on the Employer/Engineer unless and until the same are incorporated in a formal instrument and signed by the Employer/Engineer and the Contractor.

11.0 PAYMENTS

100% Payment for each lot of supply shall be made against invoice after deducting security money and or any other deductions as applicable.

12.0 MODE OF PAYMENT AND TAX DEDUCTION AT SOURCE

12.1 MODE OF PAYMENT:

12.1.1 All payments to the Contractor shall be made through Electronic Clearing System (ECS) or account payee cheques. The contractor shall furnish his Banker's details in addition to his own bank account details. All amounts payable to the contractor shall be directly credited to his bank account in case of ECS payment mode.

12.1.2 In case, the contractor is having his account with a bank not having Electronic Clearing System (ECS) it is preferable that the contractor may open a bank account with the bank having this facility.

12.2 Tax deduction at source

Income tax etc. shall be deducted from the payments credited/released by Employer/Engineer to the Contractor against execution of work as per law of the land. The deductions shall be made as per prescribed rates prevalent from time to time unless a tax exemption certificate is produced by the Contractor. Amount of tax deduction shall be deposited with the concerned authorities and tax deduction certificate shall be issued by Employer/Engineer. The Employer/Engineer shall deduct at source taxes/duties under any other law/statute as may be applicable at the time of making payments. The Contractor shall furnish to the Engineer registration No. under works tax and PAN(for TDS), as applicable.

13.0 FORCE MAJEURE

13.1 If, at any time during the currency of the contract, the performance of any obligation (in whole or in part) by the Employer or the Contractor shall be prevented or delayed by reason of any war, hostilities, invasion, acts of public or foreign enemies, rebellion, revolution, insurrection, civil commotion, sabotage, large scale arson, floods, earthquake or any other act of God, large scale epidemics, nuclear accidents, any other catastrophic unforeseeable circumstances, quarantine restrictions, any statutory, rules, regulations, orders or requisitions issued by a Government department or competent authority(hereinafter referred to as "event") then, provided notice of the happening of such an event is given by either party to the other

within 21 days of the occurrence thereof. Neither party by reason of such event be entitled to terminate the contract or have claim for damages against the other in respect of such non-performance or delay in performance.

- The obligations under the contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.
- If the performance in whole or part of any obligation under the contract is prevented or delayed by reason of the event beyond a period of 180 days, the contract may be fore-closed with mutual consent by giving a notice of 30 days without any repercussions on either side.
- In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the decision of the Engineer shall be final and binding.
- Works that have already been measured shall be paid for by the Engineer even if the same is subsequently destroyed or damaged as a result of the event. The cost of rebuilding or replacing any work that has been measured shall be borne by the Employer/Engineer.
- If the contract is fore-closed under this clause, the Contractor shall be paid fully for the work done under the contract, but not for any defective work or work done which has been destroyed or damaged before its measurement. The Engineer shall have the option to take over any plant and material lying at site, at rates provided for in the contract, failing that, as per rates which are determined to be fair and reasonable by the Engineer.

13.2 If no notice is issued by either party regarding the event within 21 days of occurrence, the said event shall be deemed not to have occurred and the contract will continue to have effect as such.

14.0 SETTLEMENT OF DISPUTES

All disputes or differences of any kind whatsoever that may arise between the Employer/Engineer and the Contractor in connection with or arising out of the contract or subject matter thereof or the execution of works, whether during the

progress of works or after their completion, whether before or after determination of contract shall be settled as under:-

a. Mutual Settlement

All such disputes or differences shall in the first place be referred by the Contractor to the Employer in writing for resolving the same through mutual discussions, negotiations, deliberation etc. associating representatives from both the sides and concerted efforts shall be made for reaching amicable settlement of disputes or differences.

b. Conciliation/Arbitration

- It is a term of this contract that Conciliation/Arbitration of disputes shall not be commenced unless an attempt has first been made by the parties to settle such disputes through mutual settlement.
- If the Contractor is not satisfied with the settlement by the Employer on any matter in question, disputes or differences, the Contractor may refer to the Secretary / Railway Board in writing to settle such disputes or differences through Conciliation or Arbitration provided that the demand for Conciliation or Arbitration shall specify the matters, which are in question or subject of the disputes or differences as also the amount of claim, item wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims of the Employer shall be referred to Conciliator or Arbitrator as the case may be and other matters shall not be included in the reference.
- Secretary / Railway Board may himself act as Sole Conciliator/Sole Arbitrator or may at his option appoint another person as Sole Conciliator or Sole Arbitrator, as the case may be. In case, Secretary / Railway Board decides to appoint a Sole Conciliator/Sole Arbitrator, then a panel of at least three names will be sent to the Contractor. Such persons may be working/retired employees of the Employer who had not been connected with the work. The Contractor shall suggest minimum two names out of this panel for appointment of Sole Conciliator/ Sole Arbitrator. Secretary / Railway Board will appoint Sole Conciliator/Sole Arbitrator out of the names agreed by the Contractor.
- In case, the Contractor opts for settlement of disputes through Conciliation at first stage and if the efforts to resolve all or any of the disputes thorough Conciliation fails, the Contractor may refer to the Secretary / Railway Board for settlement of such disputes or differences through Arbitration. The appointment of Sole Arbitrator shall be done by the Secretary / Railway Board as per the

procedure described above. No disputes or differences shall be referred to Arbitration after expiry of 60 days from the date of notification of failure of Conciliation.

- The Conciliation and/or Arbitration proceedings shall be governed by the provisions of the Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the conciliation and arbitration proceedings under this clause.
- The language of proceedings, documents or communications shall be in English and the award shall be made in English in writing.
- The conciliation/arbitration proceedings shall be held at a place decided by Conciliator/Arbitrator.
- The fees and other charges of the Conciliator/Arbitrator shall be as per the scales fixed by the Employer from time to time and shall be shared equally between the Employer and the Contractor.
- The minimum qualifications of Conciliator/ Arbitrator shall be graduate in Engineering. He may be working or retired officer with a minimum of 20 years service in Group-A of any Engineering Service of Central Govt. or an equivalent service in a Central PSU. He should be clear from the vigilance angle and should be a person with reputation of high technical ability and integrity. Also, he should not have associated with the contract to which the dispute pertains.

c. Settlement through Court

It is a term of this contract that the Contractor shall not approach any Court of Law for settlement of such disputes or differences unless an attempt has first been made by the parties to settle such disputes or differences through clauses detailed above.

d. No suspension of work

The Obligations of the Employer, the Engineer and the Contractor shall not be altered by reasons of conciliation/arbitration being conducted during the progress of works. Neither party shall be entitled to suspend the work on account of conciliation/arbitration and payments to the Contractor shall continue to be made in terms of the contract.

e. Award to be binding on all parties

The award of the Sole Arbitrator, unless challenged in court of law, shall be binding on all parties.

14.1 Exception:

For settlement of disputes with central PSUs, the procedure as per existing orders of Permanent Machinery for Arbitration (PMA), Bureau of Public Enterprises, Govt. of India shall be followed.

14.2 JURISDICTION OF COURTS:

Jurisdiction of courts for dispute resolution shall be New Delhi.