

ANNEXURE VII – 4 DESIGN REQUIREMENT

Annexure- 4**DESIGN REQUIREMENTS**

The clauses under the head 'Design Requirement' are applicable only in 'Design & Construct' contracts and in case of 'Part Design & Construct' contracts, these are applicable only to part of the contract in which the design is the responsibility of the Contractor.

1. General Design Obligations

The Contractor shall carry out, and be responsible for, the design and provide all necessary specifications of the Works in accordance with the site plans and Employers' Requirements. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. The designer shall be the same entity as proposed by the Contractor at the time of pre-qualification, unless otherwise approved by the Employer. The Contractor shall furnish Designer's Warranty in the format approved by the Employer.

The Contractor warrants that he, his designers and design Subcontractors (Detailed Design Consultant) have the experience and competence necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Engineer at all reasonable times, until the expiry date of the relevant Defects Notification Period.

The Design and Construction Standards shall be in conformity with the requirements of "Rules for Opening of a Railway or a Section of a Railway for Public Carriage of Passengers" and "Rules for Introduction of New Type of Rolling Stock" and to the satisfaction of the Commissioner of Railway Safety whose sanction is mandatory for commissioning of the System.

Upon receiving notice under Sub-Clause 8.1 [Commencement of Works] of GCC, the Contractor shall scrutinise the Employer's Requirements (including design criteria and calculations, if any) and the items of reference mentioned in Sub-Clause 4.7 [Setting Out] of GCC. Within the period stated in the Appendix to Tender, calculated from the Commencement Date, the Contractor shall give notice to the Engineer of any error, fault or other defect found in the Employer's Requirements or these items of reference.

After receiving this notice, the Engineer shall determine whether Clause 13 [Variations and Adjustments] of GCC shall be applied, and shall give notice to the Contractor accordingly. If and to the extent that (taking account of cost and time) an experienced contractor exercising due care would have discovered the error, fault or other defect when examining the Site and the Employer's Requirements before submitting the Tender, the Time for Completion shall not be extended and the Contract Price shall not be adjusted.

Technology Transfer: The Contractor shall provide the Transfer of Technology as stipulated in tender document. The Contractor shall use indigenous Materials to the maximum extent and shall use non-Indian substitutes only if Indian materials do not fit the requirements and/or are costlier.

2. Contractor's Documents

The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in

Sub-Clause 8.0 [As-Built Documents]herein and Sub-Clause 9.0[Operation and Maintenance Manuals] herein. Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language] of GCC.

The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel. The Employer's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared.

If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Engineer for review and/or for approval, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Engineer for review and (if so specified) for approval, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review and/or for approval.

Unless otherwise stated in the Employer's Requirements, each review period shall not exceed 28 days (for such voluminous technical submissions like detailed design of special spans, etc. this time limit will be suitably amended or the submissions shall be made progressively duly advising the submission schedule in advance), calculated from the date on which the Engineer receives a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.

The Engineer may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub-Clause, at the Contractor's cost.

For each part of the Works, and except to the extent that the prior approval or consent of the Engineer shall have been obtained:

- a) in the case of a Contractor's Document which has (as specified) been submitted for the Engineer's approval:
 - i. the Engineer shall give notice to the Contractor that the Contractor's Document is approved, with or without comments, or that it fails (to the extent stated) to comply with the Contract;
 - ii. execution of such part of the Works shall not commence until the Engineer has approved the Contractor's Document; and
 - iii. the Engineer shall be deemed to have approved the Contractor's Document upon the expiry of the review periods for all the Contractor's Documents which are relevant to the design and execution of such part, unless the Engineer has previously notified otherwise in accordance with sub-paragraph (i);
- b) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution;

- c) execution of such part of the Works shall be in accordance with these reviewed (and, if specified, approved) Contractor's Documents; and
- d) if the Contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Contractor shall immediately give notice to the Engineer. Thereafter, the Contractor shall submit revised documents to the Engineer in accordance with the above procedure.

If the Engineer instructs that further Contractor's Documents are required, the Contractor shall prepare them promptly and at Contractor's cost prepare such documents.

Errors omissions, ambiguities, inconsistencies, inadequacies and other defects if found at any stage in construction or any operations manufacture documents, then shall be rectified by the Contractor at his own cost and any approval or consent or review (under this sub-clause or otherwise) by the Employer/Engineer of the Contractor's Documents under this Sub-clause shall not relieve the Contractor from any obligations or responsibility under the Contract.

3. Contractor's warranty of design

- a. The Contractor shall be fully responsible, for the suitability, adequacy, integrity, durability and practicality of the Contractor's proposal.
- b. The Contractor warrants that the Contractor's Proposals meet the Employers' Requirements and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of the Employers' Requirements or any part thereof, the Contractor's Proposal shall take into account, address or rectify such inadequacy, insufficiency, impracticality or unsuitability at Contractor's own cost.
- c. The Contractor warrants that the Works have been or will be designed, manufactured, installed and otherwise constructed and to the highest standards available using proven up-to-date good practice.
- d. The Contractor warrants that the Works will, when completed, comply with enactments and regulations relevant to the Works.
- e. The Contractor warrants that the design of the Works and the manufacture of plant have taken or will have taken full account of the effects of the intended manufacturing and installation methods, Temporary Works and Contractor's Equipment.
- f. The Contractor shall also provide a guarantee from the Designer for the design for suitability, adequacy, practicality of design for Employers' Requirements.
- g. The Contractor shall indemnify the Employer against any damage, expense, liability, loss or claim, which the Employer might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty set out in this Clause.
- h. The Contractor further specifies and is deemed to have checked and accepted full responsibility 'for the Contractor's Proposal and warrants absolutely that the same meets the Employers' Requirements:
 - Notwithstanding that such design may be or have been prepared, developed or issued by the Employer, any of Contractor's consultants, his sub-contractors and/or his qualified personnel/persons or cause to be prepared, developed or issued by others.
 - Notwithstanding any warranties, guaranties and/or indemnities that may be or may have been submitted by any other person.

- Notwithstanding that the same have been accepted by the Engineer.
- i. The Contractor shall be fully responsible for the Plants, Materials, goods, workmanship, preparing, developing and coordinating all design Works to enable that part of the Works to be constructed and/or to be fully operational in accordance with the Contract's requirements.
- j. Apart from the Contractor, the above warranty shall also be applicable for his designer. This warranty shall be a part of his subcontract with the designer and should be made available at the time of signing of the Agreement.
- k. No claim for additional payment or extension of time shall be entertained and/or the Contractor shall not be relieved from any obligation/liability under the Contract, for any delay, suspension, impediment to or adverse effect upon the progress of the Works due to any mistake, inaccuracy, discrepancy or omission in or between the Contractor's, the Definitive Design and the final design, or any failure by the Contractor to prepare any Design Data or submit the same to the Engineer in due time and the Contractor shall promptly make good any such defect at his own cost.

4. Submission of Design Data

In the case of submissions subsequent to the Definitive Design, the Design Data shall be in accordance with Employer's Requirements and the Definitive Design.

The Contractor shall submit to the Engineer all Design Data, together with the relevant Design Certificates certified by the Contractor, on or before the respective dates for submission shown on the Design Submission Programme or, as the case may be, the Works Programme. In the event that a re-submission of Design Data is required, such re-submission shall be made as soon as practicable after the receipt of the relevant statement of objections. All submissions of Design Data shall include the copies as stipulated in the Employer's Requirements.

Following receipt of a submission of Design Data the Engineer shall, within 28 days, return one copy of the Design Data to the Contractor, together with either a Notice of No-Objection, or a statement of objections which shall identify the aspects of the Design Data which do not conform to the above requirements. If the Engineer returns any Design Data with a Notice of No Objection, the Contractor shall proceed with the Works in accordance with the Contract.

If the Engineer provides that revisions to a submission of Design Data/ are appropriate but that such revisions are of minor design significance, the Engineer may issue a Notice of No Objection subject to an appended schedule of comments identifying the relevant revisions. The Contractor shall revise such Design Data in accordance with such comments but shall not be obliged to re-submit such Design Data solely on account of such revisions.

If the Engineer returns any Design Data with a statement of objections the Contractor shall revise the Design Data to take account of the stated objections and re-submit such Design Data to the Engineer, together with new Design Certificates signed by the Designer and the Contractor.

The issue of a Notice of No Objection in relation to any submission of Design Data shall be entirely without prejudice to the review of subsequent submissions of Design Data or to any subsequent request for a Contractor's Variation, and shall not bind or fetter the Engineer in any manner whatsoever when deciding

whether or not to raise objections in relation to any subsequent submission of Design Data or when dealing with a subsequent request for a Contractor's Variation.

Neither an objection raised to the Design Data nor revisions of minor design significance under this Clause will, under any circumstances, constitute an Employer's Variation.

5. Submission of documents (other than Design Data)

The Contractor shall submit drawings and documents, as required by the Contract, to the Engineer in accordance with any submittal schedule agreed with the Engineer. This submittal shall be made sufficiently before the Works are to be carried out to give the Engineer and the Employer reasonable time to examine the drawings or other documents, to prepare comments and for any changes to be accommodated by the Contractor.

Where the consent of the Engineer is required, the Engineer shall notify the Contractor in writing of his decision either within such period as may expressly be stipulated in the Contract or otherwise within a reasonable time.

If the Engineer has reasonable cause for being dissatisfied with the proposals set out in the Contractor's drawings or documents, the Engineer shall, within a period of 28 days from the date of submittal, require the Contractor in writing to make such amendments thereto as the Engineer may consider necessary. The Contractor shall make and be bound by such amendments at no additional expense to the Employer and shall resubmit the amended drawings or documents for Engineer's consent.

Within 7 days of notification of the Engineer's consent the Contractor shall provide the Engineer with the type and number of sets of the relevant drawings or documents as stipulated in the Employer's Requirement.

Should it be found at any time after notification of consent that the relevant drawings or documents do not comply with the Contract or do not agree with drawings or documents in relation to which the Engineer has previously notified his consent, the Contractor shall, at his own expense, make such alterations or additions as, in the opinion of the Engineer, are necessary to remedy such non-compliance or non-agreement and shall submit all such varied or amended drawings or documents for the consent of the Engineer. No examination by the Engineer of the drawings or documents submitted by the Contractor, nor any consent of the Engineer in relation to the same, with or without amendment, shall absolve the Contractor from any of his obligations under the Contract or any liability for or arising from such drawings or documents.

The Operation and Maintenance Manuals and drawings submitted by the Contractor shall, if required, be updated by him during the Defects Liability Period and re-submitted for review by the Employer's Representative.

6. Technical Standards and Regulations

The design, the Contractor's Documents, the execution and the completed Works shall comply with the Country's technical standards, building, construction and environmental Laws, Laws applicable to the

product being produced from the Works, and other standards specified in the Employer's Requirements, applicable to the Works, or defined by the applicable Laws.

All these Laws shall, in respect of the Works and each Section, be those prevailing when the Works or Section are taken over by the Employer under Clause 10 [Employer's Taking Over] of GCC. References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise.

7. Training

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the extent specified in the Employer's Requirements. If the Contract specifies training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] of GCC until this training has been completed.

8. As-Built Documents

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Six copies shall be supplied to the Engineer prior to the commencement of the Tests on Completion.

In addition, the Contractor shall supply to the Engineer as-built drawings of the Works, showing all Works as executed, and submit them to the Engineer for review under Sub-Clause [Contractor's Documents]. The Contractor shall obtain the consent of the Engineer as to their size, the referencing system, and other relevant details.

Prior to the issue of any Taking-Over Certificate, the Contractor shall supply to the Engineer the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Employer's Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] of GCC until the Engineer has received these documents.

9. Operation and Maintenance Manuals

Prior to commencement of the Tests on Completion, the Contractor shall supply to the Engineer provisional, operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the works.

The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] of GCC until the Engineer has received and approved final operation and maintenance manuals in such detail, and any other manuals specified in the Employer's Requirements for these purposes.

The Operation and Maintenance Manuals and drawings submitted by the Contractor shall be updated by him during the Defects Liability Period and the Contractor shall re-submit the updated manuals at the end of the DLP for review and acceptance by the Engineer.

10. Design Error

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause

11. Professional Indemnity Insurance

The Contractor shall effect and maintain professional indemnity insurance (PII), in the name of the Employer, for the amount in Indian Rupees stipulated as hereunder in respect of any design of the Works to be carried out by, or on behalf of the Contractor. This insurance, which shall ensure the Contractor's liability by reason of professional negligence and errors in the design of the works, shall be valid from the date of commencement of Works, until 5 years after the date of issue of Performance Certificate or 3 years after commencement of commercial train operations whichever is later. Alternatively, the Contractor shall redeem the insurance before the expiry of the Yearly Insurance in such a way that the entire validity period is covered.

The Engineer will not issue Final Payment Certificate until the Contractor has produced evidence that coverage of the professional indemnity insurance has been provided for the aforesaid period.

12. Amount of Professional Indemnity Insurance (PII) (For Design Work):

AOA (any one accident) limit equal to 6% of the contract value against Schedule 'B' of BOQ in respect of 'design and construct' with AOY (any one year) limit of 2 incidents in a year. In the Professional Indemnity insurance Policy the deductible amount shall not be more than 5% AOA limit. All Policy shall be obtained within Four weeks from 'date of commencement'. Wherever the Contractor submits policy for shorter period / annual renewable policy, the same shall be renewed before its expiry date. In such situation, the performance guarantee shall be retained till required validity period. The Contractor's submission of such shorter period / renewable policy shall be construed as their irrevocable consent for retention of the performance guarantee.